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Supreme Court, U.S.
FILED

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No. _____

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In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

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In re: ERIC AARON LIGHTER,

dba Wells Fargo Protective Alarm Services Company, Petitioner

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# Petition for a Writ of Mandamus

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ERIC AARON LIGHTER, Petitioner
*Sui Juris* and *In Propria Persona*
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346PC

## QUESTIONS PRESENTED

1. Can the U. S. Grand Jury be sued, especially pursuant to Rule 9(a) of the Federal Rules of Civil Procedure?
2. Once the U. S. Grand Juries are sued, should the Clerk of the U. S. District Court issue default on defendant U. S. Grand Juries for failing to answer suit on said U.S. Grand Juries, especially pursuant to Rule 55(a) of the Federal Rules of Civil Procedure?
3. If the U. S. Grand Juries can not be sued, then can the U. S. District Court Chief Judge, or agent judge thereof, be sued in the capacity as manager and/or supervisor of the U. S. Grand Juries?
4. If neither suit and/or default may be made on the U. S. Grand Juries or said judge as manager and/or supervisor of the U. S. Grand Juries, and in whatever capacity such judge has related to assisting any witness or target before any U.S. Grand Jury, then is our U.S. Grand Jury system then inquisitional rather than accusatorial?
5. How can formal felony information be reported to the the U. S. Grand Jury pursuant to its indedpendant U.S. Constitution Fifth Amendment Presentment function, other than through the U. S. Department of Justice?

## LIST OF PARTIES

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1. To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court states:

The Petitioner, ERIC AARON LIGHTER, Individually, and dba WELLS FARGO PROTECTIVE ALARM SERVICES COMPANY, ("**Lighter**"), *sui juris* and *in propria persona*, prays that a Writ of Mandamus issue to order United States District Court ("**USDC**") for the District of Hawaii, and order same to enter due default, pursuant to **Rules 9(a) and 55(a)** of the Federal Rules of Civil Procedure ("**FRCP**"), on Third-Party Defendants Four Hawaii Federal Grand Juries and the San Francisco, California Federal Grand Jury in Cr. 93-059VRW, USA v. Philip Marsh,et al. (together "**Grand Juries**").

**OPINIONS BELOW**

2. On or about February 14, 1995 Lighter filed his Petition for Writ of Mandamus in the U.S. Court of Appeals for the Ninth Circuit ("**9th Circuit Court**"), Appendix Exhibits ("**AP.EX.**") "A00002-44", which was denied by Order dated April 6, 1995 and entered in the USDC for the District of Hawaii on April 11, 1995, AP.EX. "A00001". This is Lighter's forth submission of the instant Petition in effort to comply with U.S. Supreme Court Rule 33, timely filed pursuant thereto and related written and telephonic communications with the Clerk of the U.S. Supreme Court.

**JURISDICTION**

3. This Petition is brought pursuant to Rule 20 of the Rules of the Supreme Court of the United States, under the jurisdiction of **Title 28 of**

the United States Code ("U.S.C.") § 1292, U.S.C. § 1651(a), and all other applicable laws and rules, Rule 21, Federal Rules of Appellate Procedure, including 18 U.S.C. § 4, 18 U.S.C. § 1504 and 18 U.S.C. § 3501(d), and the Fifth Amendment of the organic United States ("U.S.") Constitution. One or more appeals of the instant case may be before the 9th Circuit Court, but none on points herein.

## STATUTORY PROVISION INVOLVED

4. Rule 55(a) FRCP provides that:

> "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** [*emphasis added*] enter the party's default."

Rule 9(a) FRCP provides that:

> "It is not necessary to aver the capacity of a party to sue or be sued or the authority to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include supporting particulars as are peculiarly within the pleader's knowledge."

5. On 6-18-94, Lighter sued certain U.S. Grand Juries named herein, AP.EX."A00059-90" (Certified Record ["CD"] No. 78), as a proper reporting of various serious felonies, including by Plaintiffs and cohorts in the instant case in their attempts to "set up" whistleblower Lighter (late arrival keeper of the records, authorized substitute tax return preparer and

former CEO of HPW, Inc.) to take the blame for their crimes which includes intense tax fraud (similar to other cases Lighter was involved in, see 5-31-91 Federal Register, pages ["p.s"] 24836-24843). On 8-24-94, Lighter filed the appropriate affidavit and request for default thereon, AP.EX. "A00127" (CR No. 129). On 8-24-94, the Court which permitted the suit, and the request for default, ordered the Clerk of the USDC for the District of Hawaii to not enter such default, with no reason given, AP.EX. "A00123-126" (CR No. 128). On 8-26-94, Lighter filed a second request for default on Defendants U.S. Grand Juries, AP.EX. "A00128-131" (CR No. 133). The Court has refused to respond. Lighter has since that time continuously labored to obtain clarification on the issue. On 12-5-94, the Department of Justice ("DOJ") told the Court that it did not represent the U.S. Grand Juries, AP.EX. "A000185-198". On 12-20-94 and despite protest by the DOJ, the Court granted Lighter's request to dismiss without prejudice the Third-Party Complaint against certain officers and agents of the U.S. Government both personally and professionally, including an Assistant U.S. Attorney, AP.EX. "A00184" (CR No. 187). Said dismissal left intact the Third-Party suit against Defendants U.S. Grand Juries, as well as Lighter's continued demand for access to the Defendants U.S. Grand Juries that Lighter properly sued. Lighter continued to demand that his material be honestly placed before a sitting U.S. Grand Jury before same could indict Lighter for committing and confessing to the same crimes committed by the tortious Plaintiffs and cohorts, which Lighter did

in order to have further standing before the U.S. Grand Juries the Court below tampered with or allowed to be tampered with. Said U.S. Grand Juries have never even received their U.S. mail, as well as bonds made to cover cost of their scrutiny of matters herein, formal petitions, and more. The matters have therefore been supplementally taken to U.S. Grand Juries on one or more other districts.

**BRIEF RESTATEMENT OF THE CASE AND OVERALL REASON FOR INSTANT PETITION**

6. A Writ of Mandamus is sought to order the succeeding Court of the recently deceased Honorable Harold M. Fong, judge in the USDC for the District of Hawaii, in Civil No. 94-00179-HMF, to order the Clerk of the USDC to enter default on Defendants Hawaii Federal Grand Juries and the San Francisco Federal Grand Jury In Cr. 93-0592VRW. The succeeding Court is, appropriately, that of the Honorable Alan C. Kay, USDC Chief Judge for the District of Hawaii. Judge Kay is responsible for supervising and/or managing Defendants Four Hawaii Federal Grand Juries. It has been about nine (9) months since Lighter has demanded default upon said Defendants U.S. Grand Juries, for cause, pursuant to proper procedure and argument.

a. Lighter sued Defendants U.S. Grand Juries as a proper reporting thereto of felonies duly recorded, including such as made by Lighter in order to enforce conviction of the perpetrators by joining them in their misdeeds and attempts to coverup same. These parties include a few

corrupt federal officers and agents in a normally honest government. Lighter's suit was also made in order to insure Lighter that the ongoing "set up" against him by the Plaintiffs and cohorts, in the USDC case herein, is terminated.

b. If this Court deems it appropriate to deny this Petition for Writ of Mandamus, then Petitioner will be deemed given reprieve from the felony confessions. Nevertheless and importantly, Lighter will be thereby additionally granted license to then sue on his felony confession against one or more sitting U.S. Grand Juries–to be given the opportunity to indict Lighter–and TOGETHER WITH the oncoming Defendant Chief Judge of the District (and any agent judges and/or magistrates) **ONLY** in the capacity as supervisor and/or manager of the U.S. Grand Juries. There must be <u>someone</u> who IS competent in the U.S. Grand Jury process besides the Department of Justice, who certainly is not the U.S. Grand Jury. Lighter sued Defendants Grand Juries, in essence and/or expressly, for failure to indict Lighter for crimes he committed in order to have inalienable standing to address one or more U.S. Grand Juries for actual and/or attempted serious crimes against Lighter and the public. Lighter has done so in order to **(a)** bring the tortious matters before a tribunal supplement and alternate to the USDC: the U.S. Grand Juries, and **(b)** either bring justice and due safety to Lighter or demonstrate that the U.S. Grand Juries are tampered with, partially due to valid and responsible logic formulated in instances the only method available when there is

statutory secrecy, i.e. inductively.

7. One of the key issues is that Lighter properly filed an amended corporate tax return for Defendant HPW, Inc. (a formerly active juice and water wholesaler conducting about $2 million in gross sales annually for about four years, whereupon Lighter became CEO for a few months after contracting to buy half the firm's stock as a bailee without clear notice of alleged conditions thereon)--based on the evidence supported by Lighter's affidavits, formal declarations and more--which alleged fraud and a difference from the original return of some $1.5 million in (un)reported income; primarily for the first fiscal year of HPW, Inc., 10-1-89 through 9-30-90. Lighter was duly authorized to be the Secretary and CEO of HPW, Inc., as well as the custodian of records. Lighter was duly authorized to conduct an audit the firm and to file tax returns for HPW, Inc. The three year statute of limitations has passed on the tax return for the primary period concerned; thus removing the Court's jurisdiction to challenge Lighter's tax return except for fraud, which the Court has not done. The local Internal Revenue Service refused to cooperate in Lighter's strong demand to pay HPW, Inc. and other taxes, no doubt due to standing issues and facts discussed by Lighter in abovesaid 5-31-91 Federal Register. Lighter made a felony confession to Defendants U.S. Grand Juries, stating that if Lighter was wrong he was feloniously wrong, including pursuant to **18 U.S.C. § 3501(d)**. Lighter has also agreed that if Lighter is wrong on the tax returns he filed, that Lighter will thereafter

nationally promote the thereby sanctioned tax fraud that Lighter exposed. Lighter was "set up" to be blamed for crimes actually committed by the tax fraud perpetrators, Plaintiffs and cohort Hideo Kobayashi (defaulted representative of four defendants herein), et al. Lighter's work is based, as custodian of records, on over 61 bankers boxes of records, with over seven bankers boxes being filed on public microfilm.

8. Plaintiffs have provided no substantive challenge, and have prevailed thus far only by the USDC deciding to ignore Lighter's many affidavits (the Court ordered sums due plaintiffs but not expressly due from the first fiscal year, and no express ruling was made on or against Lighter's tax return's or key first fiscal year accounting for HPW, Inc.), formal declarations (pursuant to **28 U.S.C. § 1746**) and tax returns, and a huge amount of high quality, empirical evidence; as well as a felony confession made directly to Judge Fong (at the 5-16-94 hearing before Judge Fong in the USDC see paragraph ["**par.**"] no. 70 below). The Court ignored the high quality evidence demonstrating that the essential basis for Plaintiffs's claims was a perjurious affidavit of a party who claimed under oath to be under serious mental strain. The DOJ told Lighter in writing that his material was presented to a sitting U.S. Grand Jury in Hawaii (which appears to be mere "lip-service"), but Lighter has good cause to believe there was and is serious tamperment with the U.S. Grand Juries in Hawaii. Lighter is and remains at serious risk of imminent indictment by one or more of Defendants U.S. Grand Juries, even up to

years from this date. Lighter has a right and duty pursuant to the **Fifth Amendment of the U.S. Constitution** for the therein provided U.S. Grand Jury Presentment, in order to have access to and bring the *prima facie* felony information before the U.S. Grand Juries, as well as provided pursuant to **18 U.S.C. § 1504**, which states, "Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury".

9. The Hawaii USDC's refusal to default Defendants U.S. Grand Juries is a form of injunction against Lighter to have and confirm access to the U.S. Grand Jury for matters that leave Lighter at risk of imminent indictment, a risk arising for reasons including the mere formal reporting of felonies Lighter was "set up" to be blamed for by Plaintiffs in the instant case. Another view is that injunction has been leveled against Lighter to have and confirm access to the U.S. Grand Jury until "after the coast is clear" and whistleblower Lighter alone can be indicted for crimes of those who "set up" Lighter to take the blame for their crimes. Lighter guaranteed the risk, of his indictment AND the necessity to scrutinize alleged felonies by others being exposed by Lighter, by providing a $10,000 bond and more to one or more U.S. Grand Juries to cover their cost of scrutiny of the matters herein, including Lighter's felony confession; which confession provides Lighter with inalienable standing to communicate with the U.S. Grand Juries, including those that are Defendants herein.

10. No doubt there are no minute or other orders that can be produced

that prove Defendants U.S. Grand Juries indeed even know they were sued, given any bond(s), or had petitions made to them.[1]

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1 On 9-23-94, a petition was filed by Cathy Pergola of the Grand Jury Awareness Council, "In The United States Grand Jury For The District of Hawaii" in Misc. Case No. 94-00115-DAE, entitled Petition To the Four Federal Grand Juries For The District of Hawaii To Accept Evidence of Extrajudicial Misconduct By Officers And Agents of The United States, Including Tampering With And of the Four Federal Grand Juries For The District of Hawaii, As Detailed In Amended Tax Returns, Or In The Alternative (1) Demand to Change Venue For Competent, Non-Tampered With Grand Jury Tribunal And/Or (2) Quash Related Grand Jury Subpoenas, Exhibits "A" Through "J". The long list of Petitioners required a style 67 pages. Lighter was not a Petitioner, but a witness and duly authorized tax representative for Petitioners. No action had been taken by any Court on this Petition until USDC Judge David A. Ezra, moved to avoid the entire issue with a "red herring" baseless threat of jail on a party for filing an *amicus curiae* petition. The party's cause ended up being dismissed without prejudice after Judge Ezra reversed his own original order dismissing same with prejudice. Later, a certified copy of the docket sheet shows the original petition, and a backdated order dismissing same, were expunged from their own docket sheet. In retaliation, Lighter was mysteriously named as original Defendant in an "In re" petition with no defendant, together with the amicus petitioner who entered the case some five months after the original petition was filed. Lighter's two related (filed long after the apparent backdating of said order) Declarations therein included details of how Lighter's involvement halted indictment of the principals of some 10,000 trusts led by the trustee of the famous, vastly wealthy Mellon Estate (apparently the Internal Revenue Service refunds are issued out of the Mellon Bank, whose Mellon Financial Services arm even accepts mail for the IRS in Los Angeles, California) even despite (a) the promise by the DOJ to imprison one or more of same by Thanksgiving 1994, and (b) some seventy five (75) U.S. Grand Jury subpoenas

(continued...)

11. It appears that Judge Fong may have held prejudice against Lighter pursuant to Complaint of Judicial Misconduct application sent to Lighter by the Circuit Court on 8-31-92 CR No. 65, Exhibit ["Ex."] "L"). This application was not sent at the request of Lighter, but rather at the request of Judge Fong. Lighter did not respond to the request for complaint to the Judicial Council of the Ninth Circuit. However, Lighter was then involved in the matter by other parties in their attempts to take felonies to the Hawaii U.S. Grand Juries while Judge Fong was Chief Judge, and thus responsible over same. Current Chief Judge Alan C. Kay was involved

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(...continued)
being issued by Operation Phoenix related thereto. The IRS Criminal Investigation Division ("IRS-CID") agents testified at trial in the case of the herein Defendant San Francisco, California Federal Grand Jury in Cr. 93-0592VRW, that (a) they received U.S. Presidential citations for bringing said case to trial in about Fall of 1994: as part of Operation Phoenix and (b) said case was a top Operation Phoenix project, jointly run (and until this case, covertly) between the DOJ and IRS-CID (matters related to the herein, including Lighter's intense, defensive involvement therein apparently helped cause a hung jury). Said Cr. 93-0592VRW is apparently now the largest tax case in America, where the IRS-CID publicly announced it would audit over 10,000 people related thereto, as well as probably indict a number of other parties. Lighter's defensive intervention assisted in causing a five and one half month federal fugitive released on only oral recognizance, caused by the delay in reporting to the Court being correctly based on reporting to the U.S. Grand Jury regarding felony behavior related to the U.S. Grand Jury that issued the fugitive's indictment. On 2-16-95, Lighter was even allowed into the U.S. Grand Jury room as a "spectator", with consequences still being contemplated. Strangely, television new crews apparently and routinely know when indictments are being issued long before any USDC clerks.

with the incident[2]. Related, the 9th Circuit Court denied Lighter's Petition

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2 The case involved some 10,000 acres of Hana, Maui island land, including its precious water rights. A Royal deed was granted with apparently no valid Grantor signatures, even though the rightful owners were Alii', or Hawaiian Royalty. At issue are related affidavits describing how important Royal Crown Jewels were laundered by U.S. Trustees through a company Lighter, et al. purchased subject to a Chapter 11; for more details see abovesaid 5-31-91 Federal Register. Former U.S. Senator "Spark" Matsunaga assisted the heirs, both Hawaiian High Priests who live on their own sacred temples (heiau). On public television for nearly a year, the elder Priest invoked a citizen's arrest on USDC Judge Ezra, alleging (a) Senator Matsunaga met with foul play (alleged by some sovereignists, apparently a chemically induced heart attack), and both Hawaii USDC Judges Fong and Kay (plus, per that Vietnam war hero--and very upset thereby--9th Circuit Court Chief Judge J. Clifford Wallace) were calling the High Priest at home asking to have him remove Judge Ezra's citizen's. This was rejected due to, (a) there being discovered two (2) different 9th Circuit Court signed and filed ORIGINAL key Orders for the same vital hearing--regarding potentially the disposition of even Statehood per the DOJ--during a climate of intense sovereignty issues, and (b) the High Priest's insistence on attempting to keep the matter before the U.S. Grand Juries requiring USDC level status. Eventually, in 1994, President William Clinton signed Resolution 19, which apologized for the U.S. invading and conquering the sovereign nation of the Kingdom of Hawaii. Related display ads appeared in the general circulation newspapers. At the largest Hawaii 1992 Fourth of July Parade, led by Senator Daniel Inouye, a number of parties paraded a banner describing U.S. Grand Juries being tampered with, and demanding the return of the Royal Hawaiian Crown Jewels (Lighter was told the banner carrying parties received much larger applause than Senator Inouye). Prison rallies were held, as were a number of network televised news conferences and interviews.

Of potential interest is how Plaintiff Noah Woo's cohort in the instant case,

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for Writ of Mandamus, AP.EX. "A00002-44", by Order entered in the USDC for the District of Hawaii on 4-11-95, AP.EX. "A00001". Yet, Lighter comes in prayer for Writ of Mandamus to issue from this Honorable Court, and with the following conditions: **(a)** Lighter has clean hands to bring the instant Petition; **(b)** Lighter is innocent of laches to detriment of the Respondent herein; **(c)** granting of the Writ of Mandamus would not result in injustice, and in fact will result in at the minimum a proper reporting to the U.S. Grand Juries of vital felony matters; **(d)** the act sought to be compelled is lawful; and in fact, same is the law of this Court codified in the FRCP; **(e)** the act sought to be compelled is not contrary to public policy or harmful to the public; as in fact, same is **[1]** the law of this Court codified in the FRCP, **[2]** the survival of the PRESENTMENT function of the U.S. Grand Jury guaranteed in the **Fifth Amendment of the U.S.**

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licensed architect Hideo Kobayashi, is being represented by the very attorney, Randolph Slaton, who represents the firm accused of laundering the Royal Crown Jewels. Lighter has alleged Mr. Slaton is merely using representation of Mr. Kobayashi, arrested by Bank of Hawaii (at a Honolulu Branch) for alleged theft, as a front for his richer jewelry client, especially based upon clear and serious conflicts per evidence including an affidavit of at least one attorney. Lighter was cited, on property Lighter independently purchased from Mr. Kobayashi, for significant building violations by the Honolulu Building Inspectors particularly upset because Mr. Kobayashi had been hiding from them for years while simultaneously being the architect for the scandal ridden Royal Mausoleum (missing "magic" Alii' bones), the only Royal Patent Land in America. Lighter requested a hopefully neutral U.S. Grand Jury investigate due to who the parties, and what the issues, involved included.

**Constitution** is at stake unless the Writ of Mandamus is granted, and **[3]** there has already been much public outcry over the consequences of the saga requiring the act sought, as noted in the footnotes and elsewhere in the instant Petition; **(f)** the grant of the Writ would not be nugatory or fruitless, as violation of the Court's Rules should be enforced; unless the Court wants to develop the logic of exception when, for example **Rule 55(a)** of the **FRCP**, none is provided for; and **(g)** denial of the Writ will only insure that Chief Judges and their agent judges ONLY in their role as supervisors and/or managers of the U.S. Grand Juries will be now sued for their role outside or quasi-outside their role in one of the Three Branches of Government. That is: the U.S. Grand Jury has an actual or quasi role outside the Three Branches of Government, or else it is not independent. Nevertheless, the prejudice extant herein against Lighter blocks proper reporting to the U.S. Grand Juries, yields injustice in the community plus resulting broad and specific damage, and needs the U.S. Supreme Court to cure the confusion.

**THE QUESTIONS BEFORE THE COURT ARE FOUR OPTIONS**

**12.** That is, to put it bluntly: **a.** If the only party in the U.S. Grand Jury room that is legally "competent" is the DOJ, there is thus no form of an adversarial system even between the DOJ, the U.S. Grand Jury and the Court. Therefore we have by default an obvious inquisitional jurisprudence system, and the U.S. Grand Jury is definately not independent under such circumstances. **b.** If the U.S. Grand Jury or its manager and/or supervisor

judge can be sued, then a proper reporting can thus be made through the judge to the U.S. Grand Juries of felony matters. With said judge also acting at least as a referee that "advised" the witness or target who must come into the U.S. Grand Jury room without counsel, said judge has an ostensible quasi public defender role. **c.** If the U.S. Grand Jury can be sued, then the Hawaii USDC is in violation of **FRCP 9(a) and 55(a)**. **d.** If only the judge in the capacity as manager and/or supervisor of the U.S. Grand Jury can be sued, then this Petition for Writ of Mandamus will now result in license to make such proper reporting to one or more U.S. Grand Juries through the judge.

**13.** At any rate, under the last three circumstances, there are at least some adversarial remedies, even if only "after the fact" seeking of redress for prejudice: but the U.S. Grand Jury and/or the judge in his special role may be sued.. Under the first formal, there are no adversarial and thus accusatorial conditions, just an inquisitorial condition that begets what essentially amounts to political prisoners.

**14.** **Rule 9(a) FRCP** provides a crisp definition of who can sue and be sued. The legal existence of an organization association does not have to be avered. Either the U.S. Grand Juries are independent or else we have an inquisitorial system. The possible excuse that the U.S. Grand Jury hearing is only to determine probable cause, in no way lessens the need for an accusatorial system rather than fascism. Footnoted matters herein intensify due to just such fascism preventing Grand Jury access.

**FOUR DIFFERENT NINTH CIRCUIT RULES OPINIONS**

15. To reiterate, if this Court deems it appropriate to deny this Petition for Writ of Mandamus, then Petitioner will be deemed given reprieve from the felony confessions in the case herein, as well as provided same by the U.S. Supreme Court herein, except for a point. That is, Lighter will be additionally forced to then sue on his felony confession against one or more sitting U.S. Grand Juries to be given the opportunity to indict Lighter, and in order to insure Lighter that the "set up" against him is terminated. This suit will then also have to include as a Defendant the Chief Judge of the District (and any agent judges and/or magistrates) ONLY in the capacity as supervisor and/or manager of the U.S. Grand Juries. There must be someone who IS competent in the U.S. Grand Jury process besides the DOJ, who certainly is not the U.S. Grand Jury. Hundreds of thousands of prisoners, past prisoners, and pending prisoners demand to know. Groups separate from Lighter, the Law Guardians and Rights of Innocent Inmates to Grand Jury Defense ("RIIGD"), published a nationally circulated brochure, and are among the independent efforts that have contemporaneously sprung up related to this matter. There are four different District Court conclusions in three districts in the 9th Circuit Court regarding Defendants U.S. Grand Juries and all U.S. Grand Juries, and a differing, obtuse conclusion in a USDC from the Fifth Circuit: (a) suit on them is a proper reporting, AP.EXS."A00112-116"; (b) they are an adjunct of the DOJ, par. no. 22 herebelow; (c) they are independent of the DOJ

and the District Court, AP.EXS. "A00047" and "A00053"; but **(d)** suit can be made on them but no default can be taken thereon (CR No. 129), AP.EX. "A00127".

**16.** The Rules of the USDC are promulgated by the U.S. Supreme Court and have the effect of law. It is the law, therefore, that says that default must be taken against Defendants U.S. Grand Juries. Since the 9th Circuit Court refuses to address these vital yet divergent responses to these very important issues, the U.S. Supreme Court needs to address same. The prisons may well be wrongfully filling up with parties subject to clearly tampered with Grand Juries. The backlash seems to be increasing. The national media is full of quite emotional, often misrepresented views on all sides of the domestic "peace and safety" issues. A recent 1,100+ page filing of said RIIGD parties was made to the U.S. Grand Juries for the District of Columbia, another consequence of the lack of continuity in application of **FRCP Rules 9(a) and 55(a)**[3]. To quote from a nationally

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3 In a related case, a fifth judge (from the Fifth Circuit), USDC for the District of Northern Texas, Dallas Division, refused to acknowledge even understanding how a U.S. Grand Jury can be provided a proper reporting to via a formal Complaint, John Salter, et al., v. Iran Contra Special Grand Jury, et al., Case No. 3:93-CV-0440-X. However, this decision was made during the Waco, Texas Siege when it was widely believed in certain bureaucratic circles the Waco Siege would never have any real political fallout, and thus an overt coverup was supposed to be of little potential embarrassment. Yet Lighter brought therein (a) evidence of why a large militarized siege occurred August 1992 at Ruby Creek, Idaho where shot to death were a U.S.

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Marshal, a 13 year old boy (3 times in the back) and a Mother holding her 10 month old baby (Lighter's paperwork stopped the siege, and Lighter intervened in the ensuing criminal case pursuant to having pertinent documents filed at the Boundry County, Idaho Recorder's Office prior to and assisting in the peaceful surrender of Mr. Weaver), (b) a key part of the reason why the Waco, Texas Siege occurred, and (c) the missing top secret evidence sought by the U.S. House Judiciary Committee on the infamous INSLAW Investigation (where a number of people were murdered attempting to disclose that evidence, including a highly placed Washington, D.C. investigative reporter). The INSLAW evidence included Central Intelligence Agency ("CIA") lab reports for secret, sometimes delayed reaction poisons: apparently some of which cause chemically induced heart attacks. The hearings sought an Independent Counsel over related activities of then President George Bush. Upon receipt of the package of evidence, the same U.S. House Judiciary Committee immediately closed its Davidian Compound Hearings, turning the matter over to the U.S. Treasury Department to investigate itself (no real wrongdoing found).

Federal Bureau of Investigation's ("FBI") CID Chief Larry Potts, who allegedly oversaw both the Ruby Creek and Waco Sieges (also, Mr. Potts has been and is the the Oklahoma City Bombing FBI investigation supervisor), was promoted instead of censured (see footnote no. 7); whereupon U.S. House Speaker Newt Gingrich criticized same, and said on a recent CNN newscast that same was being considered a real reason for the Republicans to not support the Oklahoma City bombing inspired, pending Anti-Terrorist Funding Bill promoted by U.S. President William Clinton. U.S. Representative Steve Stockman of Texas wrote in the June, 1995 issue of Guns & Ammo that the federal government staged the deadly raid on the Branch Davidians near Waco, Texas in order to whip up support for gun control. However, such political volatility should be no reason to deny Lighter's proper reporting the United States Grand Juries, and in fact may well be another reason for

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such proper reporting.

U.S. Presidential Candidate Arlen Specter, famous for promoting the "single bullet" theory in the slightly embarrassing U.S. Supreme Court Warren Commission, has stated that an important leg in his campaign is seeking a Congressional Hearing on the Ruby Creek and Waco Sieges. Senator Specter was given notoriety in the Oliver Stone movie JFK. Larry Howard, founder of the non-government JFK Center in Dallas approximately since the assassination of U.S. President John Kennedy, was the main consultant to Oliver Stone for that movie, and personally told Lighter that the movie was over 90% accurate. Mr. Howard was apparently murdered about one day before a party closely related to Lighter was to meet with him to receive a final batch of key evidence to supplement that found in the INSLAW evidence filed by Lighter in abovesaid case no. 3:93-CV-0440-X. The day before Mr. Howard died, his car was firebombed seemingly just having missed being in the car at the instant of detonation. Third-Party Defendant Lt. Col. (ret.) John Salter ("Salter") had his car firebombed before he met the person from Hawaii, apparently for investigative work related to background matters herein. A benefit of the coverup in said Dallas case was how is helped cause the immediate and full reversal of a--at the time just granted--Hawaii, First Circuit Court $48 million slander suit judgment against Lighter and a few other parties, Civil No. 97-2387 (claims of main Plaintiff were dismissed with prejudice, but Lighter's claims remained intact). Said slander suit was seriously tortious, and the components of which are well described in abovesaid 5-31-91 Federal Register; wherein one attorney calculated over one hundred paid attorneys (few had full knowledge) were involved in the attempt to coverup crimes including related to Iran Contra as described in said Federal Register citation.

Numerous related affidavits, court testimony and complaints, including Regulated Industries Complaints Office Complaints, were filed against now USDC Judge Ezra for his alleged wrongful role in overzealous protection of Hawaii's largest

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circulated RIIGD brochure, where membership fees for inmates is free, which shows lucid understanding now in the populace:

> "Amnesty America proudly presents a project of Constitution Coalition, a National Legal and Political Lobby Group, in order to provide members with a richer range of justice. *LAW GUARDIANS:* The LAW GUARDIANS are a para-law enforcement organization who, when the system fails, moves straight to the heart of crime, and into the courtrooms. The LAW GUARDIANS head directly towards the State and Federal Grand Juries. This includes taking

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bank, Bank of Hawaii--enduring allegations include (a) his being given his federal judgeship for being Senator Inouye's "hatchetman" in the scandal ridden Hawaii Mass Transit/Convention Center saga (related to Iran Contra, see said 5-31-91 Federal Register) effort originally to include federal land at Fort DeRussey and massive federal funds, and (b) Bank of Hawaii "packing" the federal court in Hawaii. Lighter's investigation only began after Mr. Ezra became a Federal Judge; and the matter is still open based on voluminous record, and based partly on recent FBI disclosures. Potentially related, current USDC Chief Judge Kay was a longtime director of Bank of Hawaii, and per testimony at the U.S. Senate Judiciary Committee and bank annual reports rather inherited said position. A Hawaii Grand Jury was quashed by local powers mid-impanelment when fiduciary funds from some 100,000 Hawaii condos and association reserves were alleged to be secretly commingled and invested in overnight bonds in New York (Lighter spent 5 hours with the top investigators from the Hawaii Attorney General's office); matters yet to be resolved.

The related IRS matters cited in said Federal Register still face an open case in the Department of Treasury Office of Inspector General, Investigation Division. These kind of activities also did do much to stop the Industrial Bank of Japan from connecting its "new Waikiki" to the old Waikiki through a formerly proposed, federally funded Mass Transit. The herein sought Writ of Mandamus is required to prevent further significant felony coverup that has already cost too many lives, as well as halt the significant tax crimes named and well evidenced in the instant case.

any crime, even corrupt bureaucrats, law enforcement officials and corrupt business people to the Grand Jury for criminal activities and covering up corruption. This protects our community, our Constitution, Declaration of Independence, and provides integrity to the entire law enforcement system. Our aim is to restore health and vigor to the entire law enforcement system. Let us once again become inspired to love our country and be proud. Help us significantly lower the cost of crime control, and increase the efficiency of honest government and its enforcement. All LAW GUARDIANS will receive an official pin to be worn proudly. LAW GUARDIANS training courses are available, including neighborhood watch groups. If you choose to join us as a LAW GUARDIAN, you must register with your local police and F.B.I., members of patriot groups may register with the Constitutional Court. This is in order to minimize potential abuses against honest citizens taking back their nation. IF NOT YOU, THEN WHO?"

17. Lighter has been informed that one or more independent group(s) have already begun production of one or more quality video(s) regarding the matters herein, and for national distribution in order to focus on the U.S. Grand Jury issues illustrated herein. Lighter is informed that the intention is also to assist in release or full exoneration of such (often internationally known) alleged American political prisoners as (a) Leonard Peltier of Wounded Knee, (b) Ruby Creek Siege survivor Randy Weaver, (c) alleged former key Illuminati member Ronn Jackson, and (d) release from virtual house arrest of Rodney Stitch, former Federal Aviation Authority investigator, whistleblower and author of the aviation industry rocking Unfriendly Skys, and reference book Defrauding America (he was held in criminal contempt of court for daring to file an appeal to the U.S. Supreme Court, and by the same judge[4] in Defendant San Francisco,

4 ISBN 0-932438-03-2 and ISBN 0-932438-07-5 respectively. Before his (continued...)

California U.S.Grand Jury In Cr. 93-0592VRW, Vaugn Walker).

**BACKGROUND**

18. On 12-16-93, Lighter filed his letter to the Honorable Bankruptcy Judges Lloyd King and Jon J. Chinen, plus Hawaii USDC Chief Judge Alan C. Kay, regarding providing a real property bond to the Hawaii and San Francisco U.S. Grand Juries, in order to cover the cost of scrutiny thereof, AP.EX. "A00045". This exhibit is filed in the case similar to this case, USDC Civil No. 93-914-ACK, Hideo Kobayashi, et al. v. Eric Aaron Lighter, et al., annexed to the instant case by reference and handled jointly with the instant case for purposes of settlement conferences; see Answer by Lighter for Square Root of 25, Ltd. filed 2-24-94 ("Civ. 93-914 Answer 2/24/94"), Ex. "A", p. 9.

19. On 1-6-94, Lighter filed with Judge Kay a Memorandum to be forwarded to the Hawaii U.S. Grand Juries, AP.EX."A00046"; see p. 8, Ex. "A" of Civ. 93-914 Answer 2/24/94. On 1-7-94, Judge Kay responded to Lighter, AP.EX. "A00047", see p. 7 of Ex. "A" of said Civ. 93-914 Answer 2/24/94. On 1-11-94, Lighter responded back to Judge Kay, AP.EXS. "A00048-50", see p.s 5 and 6 of Ex. "A" of said Civ. 93-914 Answer 2/24/94. Lighter quotes from the Handbook For Federal Grand Jurors, produced by the Administrative Office of the U.S. Court, Washington, D.C., demonstrating again that the Federal Grand Juries are indeed

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"house arrest", Mr. Stitch made over 1,800 media appearances nationwide.

independent from either the Executive or Judicial Branches of government. On 2-7-94, Lighter wrote to the DOJ as Judge Kay requested, AP.EXS. "A00051-52", see p. 4 of Ex. "A" of said Civ. 93-914 Answer 2/24/94. On 2-8-94, Judge Kay again responded to Lighter, AP.EX. "A00053", see p. 3 of Ex. "A" of said Civ. 93-914 Answer 2/24/94. On 2-17-94, Lighter filed with Judge Kay an update of letter dated 2-14-94 responding back to Judge Kay, AP.EXS. "A00054-57", see p.s 1 and 2 of Ex. "A" of said Civ. 93-914 Answer 2/24/94. On 3-24-94, Assistant U.S. Attorney Leslie E. Osborne, Jr., DOJ, responded to Lighter regarding my correspondence with the Judge Kay, AP.EX. "A00058" (CR 78, Ex. "1").

**20.** Based upon information and belief, Mr. Osborne falsely represented or intimated honest presentation was made to the U.S. Grand Juries (see par. no. 29 herebelow). Thus, same were therefore sued as Defendants herein by Lighter on 6-18-94 (CR No. 78), AP.EXS. "A00059-90"[5].

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5 In recent Congressional testimony for the proposed, Oklahoma City Bombing inspired, Anti-Terrorism Funding Bill proposed by U.S. President William Clinton, FBI Director Louis J. Freeh, et al. stated that the main example of who will be targeted for DOJ's request for much expanded wiretapping powers was "tax protesters". Congressional rebuttal quipped how national T.V. and radio talkshow hosts G. Gordon Liddy and Rush Limbaugh should be included. See Ex. "2" of the Lighter's Third-Party Complaint (CR No. 78), AP.EXS. "A00059-90", who is not a "tax protester", which demonstrates how Operation Phoenix--explained in said Third-Party Complaint--has been successful since 1973 in convincing Federal Judges into "giving prison sentences as deterrents" to those labeled "tax protester": whether the

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21. On 8-4-94, Third-Party Defendant Gregory Galaski filed his Answer, Crossclaim and Third-Party Complaint (CR No. 112), AP.EXS. "A00091-122". The 4-14-94 Order therein filed in the USDC for the District of Nevada, CV-S-94-00009-PMP, concludes that Mr. Galaski made a proper reporting to the U.S. Grand Jury, including via his suit against the U.S. Grand Jury in San Francisco, California that indicted Mr. Galaski. That case received a hung jury overwhelmingly in favor of the defendants

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targets knew of such label or not. In response, former Independent U.S. Presidential Candidate Lt. Col. (ret.) James "Bo"Gritz, the most highly decorated U.S. Green Beret Vietnam Commander (Lighter was national media chairman at the last part of the already highly sabotaged Presidential campaign) and together with other demolition experts, decried on national media that the Oklahoma Bombing was too perfect with far too much orchestra symmetry to have been accomplished by any non-government operation (some were even concerned how mainly no leaders were hurt in this tragedy). Ted Gunderson, a 28 year Santa Monica FBI veteran claimed in the headline article of the 5-15-95, Washington, D.C. based, nationally circulated, Populous newspaper, Spotlight, that the main bomb was "Q" clearance barometric "A-neutrontic" cold-cloud, PDTN bomb, and caused the University of Oklahoma seismograph of Dr. Ken Louzza, recording a 2nd blast approximately 10 seconds after the first blast. Lighter has good cause to bring such matters before U.S. Grand Juries for review and scrutiny, and to avoid coverup of felonies. CIA copies of Ted Gunderson's internal FBI reports and the original CIA formula drawings for the bomb are exhibits to abovesaid (footnote no. 3) Dallas USDC suit, 3:93-CV-0440-X; also filed at Hawaii Bureau of Conveyances, and showing Lighter significantly caused the Waco Siege, a response to Lighter bringing IRATEGATE to the U.S. Grand Juries in Dallas (attorney Ric Tanaka told Hawaii officials he assisted Lighter related to said filing). This Petition should help halt the tax and other crimes documented herein.

therein, and the judge praised the jury. That case exposed at trial the matters sued for in Lighter's Third-Party Complaint (CR No. 78), AP.EXS. "A00059-90", especially by confirming the therein described Operation Phoenix. After Mr. Galaski properly responded to an Order to Show Cause, the Court could not find that Mr. Galaski be prevented from suing the U.S. Grand Juries for being a purported quasi-judicial body. On the contrary, Mr. Galaski was ordered, like anyone would be, that if he or anyone "believes he has information which should be called to the attention of a U.S. Grand Jury sitting at San Francisco, California, or elsewhere (*emphasis added*), he should communicate that information to the U.S. Attorney for the Federal District in question and/or the foreperson of the Federal Grand Jury at that location (*emphasis added*)." Mr. Galaski has been re-indicted in that case, apparently by federal officers and agents with their careers seriously on the line more than justice. Lighter has offered another bond in order to cover the cost of scrutiny by the U.S. Grand Juries, and provide assurance that Lighter is not ambushed by the DOJ for his involvement. The bonds also demonstrate the U.S. Grand Juries have the capacity to sue and be sued, **Rule 9(a) FRCP**. Again, even if the U.S. Grand Juries are a quasi-judicial body, "quasi" means "superficially resembling but intrinsically different," Galloway v. Truewsdell, *422 P2d 237, 248 (Nev. 1983)*. In defense of allegations by the DOJ against Lighter in that case, Lighter filed an *amicus curiae* brief in that case, as yet unanswered.

**22.** On or about 5-1-92, Col. Salter filed in the USDC for the District of Montana a suit against the U.S. Grand Juries in the District of Columbia and Hawaii, and others, *CV92-48-M-CCL*, John Stuart Salter v. Nine Federal Grand Juries, et al. Salter made proper service upon the Defendants U.S. Grand Juries using the credible Capitol Process Services. The DOJ argued that the U.S. Grand Juries are "an adjunct of the Executive Branch, and not the Judicial Branch of government", and certainly not independent of either branch. The USDC for the District of Montana ordered that the U.S. Grand Jury was indeed an "adjunct" of the Executive Branch, granting the DOJ's absurd position. In the DOJ's 1-13-93 Opposition To Motion To Alter Or Amend Judgment And/Or For Default Judgment, which the USDC for the District of Montana GRANTED, the DOJ writes:

> "In support of his motion, the plaintiff makes a number of arguments: (1) he has a solemn duty to report 'grievous and treasonous abuses and usurpations' of constitutional rights; otherwise he has committed a misprision of a felony or treason; (2) the people to whom he has reported these abuses should be held accountable; (3) there was no order dismissing his allegations against the Grand Juries, whom he also names as defendants; (4) these entities are not protected from suit by the cloak of sovereign immunity; (5) a default judgment should be entered against the Grand Juries; and finally, (6) he has standing to bring suit.
>
> In support of his motion, he has failed to cite any pending case law or statute which requires alteration or amendment of the judgment. The members of the judiciary and the bankruptcy trustee are still immune from suit under the doctrines of sovereign immunity and judicial immunity. Furthermore, he still lacks standing to bring suit. As to the Grand Juries, he asserts[6] he 'served' the juries with

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6 Actually, as stated above, personal service was made on these parties, and (continued...)

a copy of the summons complaint by mailing a copy to a Clerk of Court or Clerk of the Grand Jury. Contrary to his argument, service of process was not accomplished. A Clerk of Court is not the 'agent' for a Grand Jury. **A Grand Jury panel is an adjunct of the Executive Branch, not the Judiciary Branch of government** [*emphasis added*]. A court merely exercises supervisory control over grand jury proceedings. Until such time as there is proper service of process, no party need take any action. However, assuming for the purposes of argument that he was to properly effect service it would be to no avail. Not only would this **Court lack *in personam* jurisdiction over individuals sitting on Grand Juries** (*emphasis added*) in Hawaii and the District of Columbia, the plaintiff lacks standing to sue. O'Shea v. Littleton, *414 U.S. 488, 493-494 (1974).* His Motion to Alter, or Amend, or for Default should be denied."

**23.** On 8-23-94, Lighter filed the, **(a)** Affidavit of Eric Aaron Lighter, Re: Proof of Service Upon Four Hawaii Grand Juries, Exhibits "1" And "2", Certificate of Service; and **(b)** Affidavit of Eric Aaron Lighter, Re: Proof of Service Upon San Francisco Federal Grand Jury In Cr. 93-0592VRW, Exhibit "1", Certificate of Service (CR Nos. 125 & 126).

**24.** On 8-24-94, Lighter filed the Request For Entry of Default Against Defendants Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr.93-0592-VRW, Affidavit of Eric Aaron Lighter, Entry of Default Against Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr.93-0592VRW, Certificate of Service (CR No.128), AP.EXS."A00123-126". Seen on inspection is this pleading's three filestamps, all on 8-24-94: "Received", "Lodged", and "Filed".

**25.** On 8-24-94, the USDC for the District of Hawaii entered an order herein (CR No. 129), AP.EX. "A00127", which states:

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(...continued)
affidavit regarding same filed in that case.

"COURT ACTION: EO: On request for entry of Default by Eric Lighter, against Defendants Four Hawaii Federal Grand Juries and San Francisco Federal Grand Jury, Judge Harold M. Fong advised Mr. Chinn not to enter Default. Mr. Lighter was personally informed of this by Mr. Chinn."

**26.** On 8-26-94, Lighter filed the Second Affidavit of Eric Aaron Lighter In Support of Request For Entry On Default Against Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr. 93-0592VRW, Ex. "A" And "B", Certificate of Service (CR No. 133), AP.EXS. "A00128-131", filed as a second request for default on the U.S. Grand Juries.

**27.** On 9-15-94, the USDC for the District of Hawaii entered an order herein entitled Order Denying Motion For Order Directing Entry of Default Judgement (CR No. 138), AP.EXS. "A00132-133".

**28.** On 10-11-94, Defendant Gregory Galaski filed his Amended Ex Parte Motion of Gregory J. Galaski for Reconsideration of Request For Entry of Default Judgment, **Rule 55(b) FRCP** (CR No. 142), AP.EXS. "A00134-136", amending his Ex Parte Motion filed 10-5-94 (CR No. 141). On 10-12-94, Judge Fong entered the Order Denying Motion of Gregory J. Galaski For Reconsideration of Request For Entry of Default Judgement (CR No. 143), AP.EXS. "A00137-140". The claimed basis for the Court denying Mr. Galaski's request was that the damages accruing against Mr. Galaski were substantial but not yet quantifiable.

**29.** On 11-18-94, and in order to take the matters to the U.S. Grand Juries in one or more other states, Lighter dismissed without prejudice the Third-Party Complaint against certain Third-Party Defendants, all of which

are officers and agents of the U.S. Executive Branch (CR No. 168), AP.EXS. "A00141-183". In this pleading, Lighter's last exhibit of said pleading includes his entire FBI Freedom of Information Privacy Act ("FOIPA") disclosure from (some three years late, see footnote no. 7) the FBI (CR No. 168, see also CR No. 60, Ex. "1"), demonstrating that former Third-Party Defendant Osborne, was a principal in a massive embezzlement and tax fraud upon Lighter, et al., and covered up same.[7] This pleading also brought out fine points regarding Lighter's efforts to

7 The FBI-FOIPA clearly shows Mr. Osborne committed the tax and other fraud coverup and related crimes with two associates, Curtis Ching of the Office of U.S. Trustees Office and Eugene F. Glenn (CR 60, Ex. "1"), especially related to laudering the Royal Crown Jewels (see footnote no. 2). The FBI ceased wanting to "cover" for these parties after Judge Kay was compromised by "intercepting" the U.S. Mail of the U.S. Grand Jury with no forwarding thereto; a matter even Mr. Osborne's 3-24-94 letter to Lighter could not cure, see par. no. 19 above and AP.EXS. "A00045" and A00058". Mr. Glenn is now the Special Agent in Charge of the Salt Lake City, Utah FBI Office, but was stationed in the Honolulu FBI Office. Mr. Glenn later ran the above footnoted siege operations at Ruby Creek for Mr. Larry Potts. When Mr. Potts was promoted (footnote no. 3), Mr. Glenn was censured with a 15 day suspension without pay. Mr. Glenn then made a formal contest wherein he alleged that the FBI committed a coverup designed to shield FBI Director Louis J. Freeh's deputy, Larry Potts. Mr. Potts is still the overall supervisor of the investigation of the Oklahoma City Federal Building Bombing, just as he was the overall supervisor of said Ruby Creek Siege and the Waco, Texas Siege. This is another way Lighter was intimately involved in matters deserving U.S. Grand Jury investigation pursuant to the Presentment function they hold, as provided for in the Fifth Amendment of the U.S. Constitution.

obtain the local IRS's cooperation in allowing Lighter to pay taxes due, and related issues.

30. On 12-5-94, the USDC heard oral arguments related to Lighter's dismissed without prejudice of those Third-Party Defendants so dismissed in said AP.EXS. "A00141-183". Said Third-Party Defendants were represented in said hearing by Michael Chun, Assistant U.S. Attorney, and Chief of the Civil Division in the Honolulu Office of the U.S. Attorney. At said hearing, Mr. Chun stated that his office did not think it represent any U.S. Grand Juries unless the USDC so ordered. The Court responded that it also did not think that his office represented any U.S. Grand Juries, although the Court could so order same *sua sponte*. The entire transcript of this hearing is located at AP.EXS. "A00185-198". This transcript demonstrates that the U.S.Grand Jury is not represented by the DOJ. That is, in the Motion to Dismiss, etc. filed 10-14-94 herein by the DOJ (CR No. 148), the government sought dismissal of the Third-Party Complaint against the Third-Party Defendants U.S. Grand Juries. Later, at the 12-5-94 hearing the DOJ retracted its position, changing its mind to state that it in fact did not represent the Defendants U.S. Grand Juries.

31. However, the court instead ordered the dismissal without prejudice Lighter's Third-Party Complaint as to only the Third-Party Federal Defendants Lighter requested pursuant to order filed 12-20-94 herein (CR No. 189), AP.EX. "A00184". This order also states that the government made "no responsive pleading".

**PETITIONER'S TAX RETURN KEY GRAND JURY EVIDENCE**

32. This Petition is annexed in full, including exhibits hereto, to the personal U.S. Tax Return of Lighter for all the years not subject to the three year statute of limitations against civil assessments by the Internal Revenue Service, Badaracco, Ernest v. Com., *(1982, CA3) 693 F2d 298, 464 U.S. 386, aff'd (1984, S Ct.)*. The tax return of HPW, Inc., Defendant herein, was most recently amended by Lighter on 10-26-93 for first fiscal year of HPW, Inc., 10-1-89 through 9-30-90. This HPW, Inc. amendment can not be further amended except for fraud, as the three year statute of limitations has passed, Kelly v. Com., *(1989, CA9) 877 F2d 756.*

33. Said first fiscal year HPW, Inc. tax return was one of the most important tax return brought before the herein Defendants U.S. Grand Juries. Except that it rule regarding fraud, this passing of the statute of limitation caused the USDC in the District of Hawaii to lose jurisdiction to rule on the veracity of the allegations of Lighter regarding the first year of HPW, Inc.'s operation, the critical source year of the tax fraud alleged by Lighter. That is, Lighter alleged the tax fraud scam of HPW, Inc. was sourced mainly in the first year of operation, a story codified in the HPW, Inc. tax return filed by Lighter and amending the tax return of the tax fraud perpetrators. As a matter of law Lighter is presumed correct in the allegations made in the now unchallengeable HPW, Inc. tax return and his personal tax return, except if there is fraud. Lighter alleged fraud in both unchallengeable tax returns, which allegations of fraud can not be

challenged except for fraud. Thus, as a matter of law, Lighter pleaded a meritorious argument.

**34.** The HPW, Inc. tax returns filed by Lighter on 10-26-93, were annexed in full, including exhibits, to the personal U.S. Tax Return of Lighter for all the years not subject to the three year statute of limitations against civil assessments by the Internal Revenue Service. Portions of the HPW, Inc. tax returns filed by Lighter on 10-26-93 were on multiple occasions annexed filings by parties related only by their common concern over the tampering of the U.S. Grand Juries, together with supporting documentation--which are all part of Lighter's personal tax return as noted--in the Hawaii Bureau of Conveyances at the following locations (and elsewhere). These records include over 475 filed folders of approximately 2 1/2 to 3 inches thick each, comprising over 165,000 pages of evidence on public microfilm[8]. These records also include the evidence supporting the matters herein, included the footnoted events. That is, in all of these documents can be found hundreds, perhaps thousands of memorandums, letters and other communications, very many being via certified mail or receipted hand delivery, to operational and oversight personnel and offices in both the Legislative and Executive Branches of the U.S. Government.

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8 Five of the indexes are found at Doc. No. 91-046610 filed 4-12-91; Doc. No. 91-077267 filed 6-14-91; Doc. No. 92-043187 filed 3-24-92; Doc. No. 92-189546 filed 11-20-92; and Doc. No. 94-003954 filed 1-10-94; although another approximately 170 thick relevant folders have been filed since the last index.

Seen also in light of the frustration sourced by the Judiciary Branch thus far, clearly administrative remedies have been exhausted perhaps more than most efforts ever attempted.

**ARGUMENT**

35. Therefore, **Rule 55(a) FRCP** gives neither the Clerk of the Court or the Court zero option regarding entering default. Default MUST be entered. In Enron Oil Corp. v. Diakuhara, *27 Fed Rules Serv 3d (2CA, 1992)*, entry of default was deemed proper if there was "a willful default or a refusal to proffer an excuse for not responding" or "a meritorious defense", which was not the case therein but is the case herein. Third-Party Plaintiff Lighter has been prejudiced due to the delay in default. Lighter made a felony confession in this case stating in sum that, if the tax returns Lighter filed are false then they are criminally false and Lighter demands to be indicted thereby. Thus, the Grand Jury's response, once actually notified of the proper reporting via the Third-Party Complaint thereon, can surely result in the arrest of Lighter irrespective of the veracity of any party herein that opposes Lighter, including for reason of covering up of tax fraud committed. Lighter's allegation that his tax filing are truthful, verses those filed before him, must be view in light of the difference being over $1.5 million dollars in (un)reported income.

36. Thus, one of the meritorious arguments are that, although perhaps neither Lighter nor the Plaintiffs and cohorts are legal, it is certainly true that both sides can not have the truthful tax returns. Someone should and

likely will be indicted therefore anyway. Default must be taken against the U.S. Grand Juries to whom Lighter made felony confession to, in order to further assure that Lighter is not held up to Grand Jury scrutiny and indictment only at the whim of vindictive officers and agents of the U.S. government who ignore as they please valid, voluntary and highly supported by high quality empirical evidence felony confessions. Felony confessions are admissible pursuant to **18 U.S.C. § 3501(d)**. Yet, Lighter would be willing to have this court and the courts below determine that Lighter did in fact file false tax returns, thereupon approving for mass circulation the tax frauds of the tax returns Lighter opposed in this case.

**37.** In Bleitner v. Welborn, *28 Fed Rules Serv 3d 49 (7CA, 1992)*, a default judgement was not imposed on the executive branch of the government for being a few weeks late in a habeas corpus petition because no harm was done AND the time was relatively short with at least the appearance of excusable neglect. In the instant case, the U.S. Grand Juries should have been defaulted, especially since there was no excusable neglect. In fact, Lighter alleges that the U.S. Grand Juries have not answered because they were tampered with, including by not having been put on notice of the Third-Party Complaint against them; and even in the face the 3-24-94 letter from the DOJ to the contrary, AP.EX. "A00058". The default should have been entered about eight months ago.

**38.** The traditional doctrine that defaults are strongly disfavored is no longer the rule in the Seventh Circuit. In fact, in order to set aside an entry

of default the defendant must show good cause, quick action to correct it, and a meritorious defense to the plaintiff's complaint, O'Brien v. Sage Group, Inc., *19 Fed Rules Serv 3d 1039 (ND Ill 1991)*. Failure to appear by a corporation after process was served did not cure a default judgment in the Ninth Circuit with a statement by the firm's President that he would refer the matter to his attorney, Direct Mail Specialists, Inc. v. Exlat Computerized Technologies, Inc., *841 F2d 685 (CA9, 1988)*. In Hudson v. State of N.C., *158 F.R.D. 78 (ED NC, 1994)*, a motion to dismiss prevented a default judgement, although prejudice to plaintiff was a factor in considering exercise of the court's discretion on whether to enter default. In the instant case, Lighter is prejudiced by failure to enter default; and no objection has been made, let alone a motion to dismiss. On the contrary, AP.EXS. "A00185-198" demonstrates that neither the court nor the DOJ believe they did or do now represent Defendants Grand Juries. In Beck v. Atlantic Contracting Co., Inc., *157 F.R.D. 61 (D Kan, 1994)*, the entry of default judgement was appropriate in light of evidence that defendant received proper service and failed to respond.

39. As noted above, in the Motion to Dismiss, etc. filed 10-14-94 herein by the DOJ (CR No. 148), the government sought dismissal of the Third-Party Complaint against Defendants U.S. Grand Juries. Later, at the 12-5-94 hearing--transcript of which is also made part of AP.EXS. "A00185-198"--the government retreated from its position, changing its mind to state that it in fact did not represent the Defendants U.S. Grand Juries.

However, the government and the Court clearly recognized that Defendants U.S. Grand Juries were indeed properly served with the Third-Party Complaint. This service was perfected even if same was also tampered with by interception of Third-Party Complaint which resulted in the Defendants U.S. Grand Juries not actually receiving said Complaint; which inductively and deductively appears to be the actual truth.

**CAPACITY OF THE FEDERAL GRAND JURIES**

40. Capacity, in the legal sense, means the qualification or competency of persons, natural or artificial, for the performance of civil acts depending on their state and condition as defined or fixed by law, Hronek v. People, *24 N.W. 861, 865.* The government and the Court, pursuant to the government's pleading and the Court's response, waived the defense of capacity by not expressly so stating same as the representative of Defendants U.S. Grand Juries; which, on the contrary, neither the Court nor the government represent by their own statements, AP.EXS. "A00185-198", which is in direct contradiction to the position of the very same DOJ as well as the Judiciary in par. no. 22 above. In Pressman v. Estate of Steinvorth, *860 F Supp 171 (SD NY, 1994)*, the defense of lack of capacity of the party to sue or be sued is waived if not raised in a timely manner the outset of the lawsuit. The default against Defendants U.S. Grand Juries in the instant case should have been entered about eight months ago. Failure to set forth particulars supporting plaintiff did not have requisite standing to bring suit in effect waived the capacity defense by failing to be

more explicit in defendant's answer. *Id.* In Chiropractic Alliance of New Jersey v. Parisi, *854 F Supp 299 (D NJ, 1994)*, the capacity defense challenge was defeated by plaintiff pleading claims with specificity and particularity.

41. On 6-18-94, Lighter's Third-Party Complaint against the Third-Party Defendants U.S. Grand Juries expressly describes capacity with particularity, AP.EXS. "A00059-90". Moreover, on 8-26-94, Lighter did put at explicit issue the capacity of Defendants U.S. Grand Juries, AP.EXS. "A00123-131". Thereafter, neither the DOJ nor the Court made explicit defense of Defendants U.S. Grand Juries. On 10-14-94, the government filed its Motion to Dismiss, etc. (CR. No. 148), wherein the government puts itself up as the representative of the Grand Juries even to the point of requesting the Court to dismiss the Third-Party Complaint against same. The government's argument for such dismissal against Defendants U.S. Grand Juries was weak and general. Thereafter, in the 12-5-94 hearing, the transcript being part of AP.EXS. "A00185-198", shows the government changing its mind and suddenly decided it no longer represented Defendants U.S. Grand Juries, confirmed by the Cout, AP.EX. "A00184". Lighter has even complied with any policy to stipulate capacity in the complaint in civil rights cases, Nix v. Norman, *879 F2d 429 (CA8, 1989)*.

42. In Wagner Furniture Interiors, Inc. v. Kemner's Georgetown Manor, Inc., *929 F2d 343 (CA7, 1991)*, the court held the defendant had waived

the defense of no capacity to sue because defendant did not raise the lack of capacity to sue "by specific negative averment" in an appropriate pleading or amendment. See also Howerton v. Designer Homes by Georges, Inc., *950 F2d 281 (CA5, 1992)*, where the USDC even entered judgement in every capacity of a corporate defendant after corporation was named a defendant "in every capacity". The government's 10-14-94 Motion to Dismiss, etc. (CR No. 148), it failed to make such specific negative averment, making only tepid and general demand for dismissal of the Third-Party Complaint against Defendants U.S. Grand Juries.

**43.** In Eisenburg v. District Attorney of the County of Kings, *847 F Supp 1029 (ED NY, 1994)*, entry of default judgement was technically improper because entry of default was not entered first, and delay in answering complaint was not willful. Perhaps Mr. Galaski should have done this also and would thereby have avoided denial by the Hawaii USDC, see AP.EXS. "A00091-122", "A00132-133". However, Lighter ONLY and PROPERLY requested entry of default and not default judgement. Defendants U.S. Grand Juries could not have committed a willful delay if they were tampered with, and no Complaint was given to them even though service was properly made upon both the Jury Administrator for the USDC and the DOJ. It should be noted, however, that Mr. Galaski likely does has valid arguments that no doubt should have caused the default and default judgement on the Grand Jury defending against Mr. Galaski's complaint. Even a sensible and efficient use of supervisory

power by the Federal Court is invalid if it conflicts with constitutional or statutory provisions, **Rule 55(a), FRCP**, see par. no. 23 above, Bank of Nova Scotia v. U.S., *108 S.Ct. 2369 (CA9, 1988)*.

**44.** In fact, dismissal of an indictment for non-constitutional error is appropriate if it is established the violation substantially influenced Grand Jury's decision to indict, or there is grave doubt that the decision to indict was free from substantial influence of such violation, **52(a) FRCP**, *Id.* Dismissal of indictment may be proper even when no actual prejudice has been shown to have resulted from prosecutorial misconduct before the Grand Jury, as long as there is evidence that challenged authority was something other than an isolated incident unmotivated by sinister ends, or that the type of misconduct challenged has been "entrenched and flagrant" in the circuit, U.S. v. Serubo, *604 F2d 807 (CA3, 1979)*.

**45.** Further, once default is entered, the only option the Court has, pursuant to **Rule 55(c) FRCP**, to avoid entering judgment is in the instance of the party being either a minor or incompetent. The question of whether a party is a minor or not is simple. By definition, Grand Juries are composed of citizens expressly not minors. Should the Grand Jury be deemed incompetent, then the question arises how anyone in the same district could ever be validly indicted. AP.EXS. "A00128-131" contains Lighter's discussion regarding how the Clerk of the Court must enter a default against Defendants U.S. Grand Juries, just as if a "rock or a myna bird were sued". If the Grand Juries are incompetent, perhaps there are

rouge U.S. Grand Jury forepersons signing indictments.

46. The issue of bonding the Defendants U.S. Grand Juries is vital to consideration of the capacity of these defendants to sue and be sued. No defense of immunity has been offered. No defense of lack of capacity has been offered. The DOJ and Court agree, AP.EX. "A00184", that the DOJ could represent the U.S. Grand Juries, albeit even if only ordered to do so. Defendants U.S. Grand Juries have, as an entity and by components, the capacity (a) to be represented, (b) to hold property, (c) to operate separately from the Court and the DOJ, (d) are composed entirely of adults, and (e) are presumably of sound mind. The U.S. Grand Juries have rejected no bonds, and do have expenses for conducting their scrutiny of matters before them. These expenses are similar to operation of any administrative body composed solely of citizens not bureaucratically aligned with the agency associated therewith, in this case the Court.

47. Even if the U.S. Grand Juries are adjudicated a quasi-judicial body, there is no immunity from suit except same be affirmatively made, and certainly no immunity for actions outside of the scope of the law. Tampering with U.S. Grand Juries, and allowing tampering with U.S. Grand Juries is obviously and by law a felony. Intercepting the U.S. mail, valuable bond(s), valid lawsuit, and felony related information due the U.S. Grand Juries is certainly tampering with U.S. Grand Juries. Lighter has no defense against vindictive, tampering-based indictment(s) unless the U.S. Grand Juries can indeed conduct its presentment function without

corruption and coverup of corruption by forces and entities that certainly are not the U.S. Grand Juries.

**48.** To continue, certainly the U.S. Grand Jurors can hold property. The U.S. Grand Jury as an entity has significant cost and expenses. The U.S. Grand Jury obtains its budget from the U.S. Treasury, but so also do ordinary trial juries in federal cases, and this does not make them part of the U.S. government *per se*. There is not only a separation of powers in the Branches of government, but a separation between the government and the people. The U.S. Grand Jurors are the people, not the government. The people, however vested with certain powers from the Court, are not the Court. Quasi bodies can sue and be sued.

**49.** Lighter has offered another bond in order to cover the cost of scrutiny by the U.S. Grand Juries, and provide assurance that Lighter is not ambushed by DOJ for his involvement. The bonds also demonstrate that U.S. Grand Juries have capacity to sue and be sued, **Rule 9 FRCP**.

**REAL PROBLEM: GRAND JURY NOTICE & MAIL TAMPERING**

**50.** The real problem is not that the U.S. Grand Juries can sue or be sued, they can. The real problem is that the U.S. Grand Juries, when sued or petitioned, have such suits or petitions intercepted so that the U.S. Grand Juries never even know they were sued, petitioned, or provided with a bond to cover the cost of scrutiny in the presentment function. The real problem is so severe that not even felony confessions can be provided to the U.S. Grand Juries without same being intercepted when

such confessions even slightly implicate officers and agents of the U.S. government. Such coverup of corruption as in the instant case, is certainly tampering with U.S. Grand Juries. A Writ of Mandamus is proper, long recognized as part of American common law inherited from England, Clement v. Graham, *(1905) 78 Vt 290, 63 A 146*; and in fact statutory authorization for same being found in virtually every State in America, Commonwealth v. Knowlton, *(1807) 2 Mass 530.*

**GRAND JURY IS LEGALLY INDEPENDENT**

**51.** The issue of whether the Grand Jury is independent from the DOJ and the Court is well settled in this Circuit Court. Annexed hereto by reference is abovesaid Handbook for Federal Grand Jurors. AP.EXS. "A00048-50" makes important quotes from this book. On p. 7 thereof,

> "(1) Matters may be brought to the attention [of the Grand Jury] in three ways: (1) by the United States Attorney or his assistants; (2) by the court that impaneled it [*emphasis added*]; and (3) from the personal knowledge of a member of the grand jury or from matters properly brought to a member's personal attention. In all these cases, the grand jury must hear evidence before taking action."

On p. 23 thereof, it states,

> "Just as it is hoped and expected that you will serve as the balance wheel between the power of the government and the interests of personal liberty [*emphasis added*], it is also expected that you will achieve an appropriate balance in the exercise of your powers."

On p. 24 thereof, it states,

> "Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney [*emphasis added*], the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of

Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's office *[underline added]*."

On p. 34, it states,

"Within your prescribed sphere, you occupy an important and independent office in the administration of justice. The government attorneys cannot dominate or command your actions. The court may guide, but cannot dominate or command your actions *[emphasis added]*".

52. These are important matters. AP.EXS. "A00045-90" clearly show that Judge Kay was incorrect in intercepting the Grand Juries's mail, 39 U.S.C. § 3001. The Chief Judge supervises and impanels the Grand Juries. The Chief Judge is responsible to forward communications to the Grand Juries, and same is in no way judicial intervention. Judge Kay cites two cases. In U.S. v. Chanen, *549 F 2d 1306 (9th Cir. 1977)*, this case elucidates how,

"under constitutional scheme, grand jury is not and should not be captive to any of the three branches of government."

However, the court,

"must compel grand jury witness to testify if, after appearing, such witness refuses to do so."

Regarding U.S. v. Chanen, in Federal Grand Jury Practice, March 1983, William French Smith, Attorney General, DOJ, p. 72, it states,

"Chanen offers an excellent discussion of the supportive and complementary roles [supposed to be] played by court and prosecutor with respect to the work of the grand jury. The discussion supports the description of the **grand jury being 'supervised' by the court** rather than as an appendage of it *[emphasis added]*. The district court may properly deny a grand jury use of subpoenas to engage in 'the indiscriminate summoning of

witnesses with no objective in mind and in the spirit of meddlesome inquiry' and may curb a grand jury when it clearly exceeds its historic authority. Hale v. Henkel, *201 U.S. 43, 63 (1906).*"

The Grand Jury is impaneled by the Court pursuant to **Rule 6(a)**, Federal Rules of Criminal Procedure.

**53.** The other case cited by Judge Kay is In Re Antitrust Grand Jury Investigations, *714 F.2d 347, 350 (4th Cir. 1983).* This case focuses on concerns regarding quashing a Grand Jury subpoena or otherwise determining whether the Grand Jury has misused its subpoena process. This in no way relates to the matter of the Grand Jury supervisor merely passing on the mail to the Grand Jury. However, Lighter has every right to be concerned with the question, did the DOJ really deliver Lighter's material to a sitting U.S. Grand Jury as it promised in AP.EX. "A00058". The DOJ, by its own admission was working with Judge Kay on this matter. Herein, the DOJ has changed it mind on whether it represents the Grand Jury, just at the Court changed its mind on whether it can intercept rather than pass on the Grand Jury's federally protected mail.

**54.** Further, in regards to the court's supervisory or administrative function in said Federal Grand Jury Practice, p. 6, it states,

> "Rule 6(c) provides: 'The court shall appoint one of the jurors to be foreman and another to be deputy foreman.' USAM 9-11.340."

The court's supervision can be broad. On p. 26 of said Federal Grand Jury Practice, it states,

> "D. Disclosure Under Court Order: Rule 6(e)(3)(C)(i), 1. General Rule, Disclosure of otherwise non-disclosable matter is permitted

under rule 6(e)(3)(C)(i) when the court so directs 'preliminarily to or in connection with a judicial proceeding.' Judge Learned Hand, in the seminal case, defined "judicial proceeding" as follows: [T]he term 'judicial proceeding' includes any proceeding determinable by a court, having for its object the compliance of any person, subject to judicial control, with standards imposed upon his conduct in the public interest, even though such compliance is enforced without the procedure applicable to the punishment of crime. Doe v. Rosenberry, *255 F.2d 118, 120 (2d Cir. 1958) (emphasis added)*."

On p. 71 of said Federal Grand Jury Practice, it states that,

"3. Power limited by district court, The grand jury is under the supervision of the courts. The grand jury must rely on the district court's subpoena and contempt powers, because it lacks its own enforcement power. Brown v. United States, *359 U.S. 41 (1959)*."

and

"Although a matter should not be presented to a grand jury in a district unless it has venue, the grand jury may investigate matters even though they occurred partly outside the district. A witness cannot challenge the right of the grand jury to inquire into events that happened in another district. Blair v. United States, *250 U.S. 273, 282-3 (1919)*; In re May 1972 San Antonio Grand Jury, *366 F. Supp. (W.D. Tex., 1973)*. The grand jury has jurisdiction to investigate a conspiracy if it appears that it was formed in the district or any overt act occurred within the district. **18 U.S.C. Section 3237** [*emphasis added*]; Hyde v. Shine, *199 U.S. 62 (1905)*; Downing v. United States, *348 F.2d 594 (5th Cir.) cert. denied 382 U.S. 901 (1965)*."

Thus, venue can even overlap or be changed as appropriate. **Riddle**: who do you turn a tampered with federal grand jury over to? Answer: another federal grand jury in another venue.

**55.** The Grand Jury relies upon the court for delivery of its mail. The Grand Jury is under at least quasi supervision of the Chief Judge, here Judge Kay. Asking Judge Kay to forward the mail to the Grand Jury was proper and timely, especially when a voluntary felony confession

supported by redundant, *prima facie* and high quality evidence was included. To thwart such a confession could be construed as tantamount to Misprision of Felony, **18 U.S.C. § 4**, or accessory after the fact, **18 U.S.C. § 3**. The U.S. Grand Jury has jurisdiction to investigate the matters herein, and in fact was presented same by DOJ, see AP.EX. "A00058".

**56.** The DOJ may not circumvent the safeguard of the U.S. Grand Jury by overreaching conduct which deprives the U.S. Grand Jury of autonomous and unbiased judgement, U.S. v. Al Mudarris, *695 F2d 1182 (CA9, 1983)*. The prosecutor may not, by making prejudicial remarks to sway the U.S. Grand Jury, deny an accused his right to have his indictment be tested by the U.S. Grand Jury's independent judgement, *Id.* It is constitutionally required that an indictment be returned from a legally constituted and unbiased U.S. Grand Jury, U.S. v. Samango, *607 F2d 877 (CA9, 1977)*. There is no serious way the U.S. Grand Jury can actually be unbiased when it is not allowed to receive suits against it, petitions to it, felony confessions made to it, bonds to it in order to cover its cost of scrutiny, and other felony information sent to it through U.S. mail. Similarly for example, a prosecutor may not make statements or argue in a manner calculated to inflame the U.S. Grand Jury unfairly against the accused, U.S. v. Hogan, *712 F2d 757 (CA2, 1983)*. Dismissal of an indictment is justified to achieve either of two objectives; to eliminate prejudice to a defendant or, pursuant to court's supervisory power, to prevent prosecutorial impairment of U.S. Grand Jury's independent role, *Id.*, U.S.

v. Kilpatrick, *821 F2d 1456 (CA10, 1987).*

57. Access to the U.S. Grand Jury is constitutionally protected, and it may investigate every available clue to find if a crime has been committed. Such investigation may be triggered by hearsay including tips, rumors, evidence proffered by the prosecutor, or by personal knowledge [*or observation*] of the Federal Grand Jurors themselves, Schwartz v. U.S. Dept. of Justice, *494 F Supp 1268 (ED Penn, 1980).* The Court cannot interfere with the prerogatives of the U.S. Grand Jury unless there is a clear basis in fact and law for doing so, *Id.*, which in the instant case there is no such basis or any such basis claimed. The same applies to the DOJ.

58. The two provisos often used to measure prosecutorial use of hearsay, for example, are (a) that the prosecutor does not deceive grand jurors as to `the shoddy merchandise they are getting so they can seek something better if they wish,' or (b) that the case does not involve `a high probability that with eyewitness rather than hearsay testimony the grand jury would not have indicted,' U.S. v. Estepa, *471 F2d 1132 (SD NY, 1972).* There has clearly been significant, material and prejudicial interference with Defendant U.S. Grand Juries in the instant case. Overstatements by witnesses can also cause dismissal of indictment, *Id.*

**CONTEMPT PROCEEDINGS CAN BE INSTITUTED**

59. Lighter's Third-Party Complaint was issued with a Summons, which is a Court Order. The parties who interfered with delivery to Defendants U.S. Grand Juries by intercepting the U.S. mail, valuable bond(s), valid

lawsuit, and felony related information due the U.S. Grand Juries, also obstructed said Summons. Contempt of Court proceedings could be instituted therefore. More detail is seen in Federal Grand Jury Practice, March 1983, William French Smith, Attorney General, DOJ, p. 158, it states under Non-routine ex parte motions,

> "Most civil contempt proceedings fall under **28 U.S.C. § 1826**, controlled by statute with developing procedural niceties. See In re Sadin, *509 F2d 1252 (2d.Cir. 1975)*; United States v. Hawkins, *501 F.2d 1029 (9th Cir.), cert. denied, 419 U.S. 1079 (1974)*, which held that due process rights created under Fed. R. Cram. P. 42(b) must be observed under **28 U.S.C. § 1826**. (1) Counsel, (2) Some sort of notice of proceeding and consequence, (3) Chance to demonstrate 'just cause' for refusal to comply: (a) 5th Amendment, (b) Attorney-Client, (c) Other privileges, (d) Privacy, (e) Illegal wiretaps, (f) Flaw in service, (g) Flaw in grand jury, (h) Prosecutorial abuse, misconduct, (i) Oppressive. Note: Substantive law is same as if witness had moved to quash on all of these items."

**FRAUDULENT RETURN WITH CONFESSION SHOULD GIVE TRUE STANDING TO PRESENT FELONY TO GRAND JURY**

60. In the, Handbook for Special Agents, Criminal Investigation Intelligence Division, Internal Revenue Service, annexed hereto by reference (filed in Lighter's original Answer) section 418.11 and 418.12,

> "A person who willfully makes and subscribes, under penalty of perjury, any return, statement, or other document which he/she does not believe to be true and correct, as to every material matter, commits a criminal offense,"

See **26 U.S.C. § 7206**, Fraud and False Statements; note also the related section **18 U.S.C. § 7207**. In the same IRS-CID Handbook section,

> "(1) The elements of a criminal violation under this Code section are: (a) Making and subscribing a return, statement or other document under penalty of perjury; (b) Knowledge that it is not true

and correct as to every material matter; (3) Willfulness."

Lighter's felony confession conclusively establishes Lighter's intention.

61. In Federal Grand Jury Practice, published by DOJ, March 1983, p.5,

> "The grand jury has been afforded the broadest latitude in conducting its investigations...supervised by the district court...In a joint tax and narcotics grand jury investigation approval [*for DOJ participation*] for the tax investigation must be obtained through the Tax Division...Moreover, approval [for DOJ participation] for RICO charges, **18 U.S.C. Sections 1961-1968**, must be obtained from the Attorney General or his agent (Organized Crime and Racketeering Section, Criminal Division)."

The instant case is regarding RICO allegations.

62. Lighter's Affidavits and Declarations, ignored by the Court below, including AP.EXS. "A00177-236", show this to be a tax case involving the equivalent of seventy (70) forty foot (40') seagoing containers of heavy inventory missing in about four (4) years, which equals about half (1/2) a mile of containers. There are no invoices signed for almost $8 million in transactions between Plaintiffs and cohorts. There are: (a) forged checks, (b) a contrived warehouse eviction, (c) attempted "clean up" of crimes and removal of records via bankruptcy, (d) overwhelming alter-ego operations between alleged vendor and vendee evidenced by a huge cloud of interchangeable names, addresses, phone numbers, employees, business cards, invoices, statements, tax return documents, checks, etc., (e) missing corporate stock supposed to be in a bank escrow, (f) Twilight Zone computer run billings, (g) fraudulent police report and/or bribery/ coercion/blackmail/other to withdraw true police report charges, (h) double

books to induce liquor sales*, etc., (i) checks to HPW, inc. missing due to being sent to Plaintiffs post office box despite protest, Fedway v. U.S., *976 F 2d 1416 (D.C.Cir. 1992).*

63. In other words, there is no possibility that Plaintiffs have no idea what happened to the $1.5 million plus that is missing from Defendant HPW, Inc., the same $1.5 million that Lighter claims is missing at risk of a long prison term. That is, Plaintiffs knew or should have known that their tax returns, based upon their financial relationship with HPW, Inc., were fraudulent when they filed them. Lighter and Plaintiffs each know approximately the same financial facts, but with two very different allegations. IT IS VIRTUALLY IMPOSSIBLE THAT AT LEAST ONE PARTY IS NOT LYING. The U.S. Grand Jury HAS probable cause here.

64. Lighter and media across this country are eagerly looking forward to this Court formally announcing that two tax returns for the same business entity, including Schedule C for individuals filing form 1040s, and the same business period, can now coexist without conflict; true even though they are over $1.5 million different in (un)reported income. The tax course has been long in preparation, but a Parade Across America is to be truly launched that will support the official position of the United States already detailed in said 5-31-91 Federal Register. The DOJ and the White House have shown continued cause to coverup the matters therein. The Office of Professional Responsibility ("OPR") flew from Washington, D.C. to Hawaii to meet with Lighter 6-20-91, when Lighter's work aided in the

conviction of Admiral Poindexter, and more. Lighter's work was based on evaluating the misdeeds by U.S. officers and agents in context of their intentionally missing the official standard, Generally Accepted Government Accounting Standards ("**GAGAS**"). See discussion on GAGAS in AP.EXS. "A00171-172" [OPR letter, AP.EX."A00118", CR No. 112].

65. This Petition, together with all exhibits annexed hereto by reference and annexed by attachment are hereby annexed to the tax return of Lighter and is supplementally the property of the U.S. Grand Jury for the District of Columbia. The **26 U.S.C. § 6103(b)(1)** discusses how a "return" is any return, estimated tax declaration, information return or refund claim which is filed by, on behalf of, or with respect to any party. Further, a return also includes any amendment or supplement to the return, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return. **26 U.S.C. § 6103(b)(2)(A) and (B)** discusses how a tax return, including for a corporation, needs "return information", which is,

> "in part, a taxpayer's identity, the nature, source or amount of its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments and tax payments, whether the return is, was or will be examined or investigated, or any other data with respect to a return or determination of the existence of the liability of any party for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, plus any part of any written determination or any background file document relating to such written determination, not open to public inspection", see Church of Scientology v. IRS, *569 F Supp 1165 9th Cir.1986), cert. granted (1987, S Ct) 479 US 1063.*

66. It may well be true that,

> "It is not within the power granted to federal courts to right every

> wrong that may be inflicted on individuals in our society, and a judge is not knight-errant, roaming at will in pursuit of his own ideal of beauty and goodness." McFarlin v. Newport Special School Dist., *784 F. Supp. 589 (E.D.Ark. 1992).*

However, it is the Defendants that were victimized by Plaintiffs. Mere "huff and puff", "smoke and mirrors", "red herrings" and tantrums by Plaintiffs do not bring back the embezzled money or cure the problem of two very different tax returns that will indict Lighter if Lighter is incorrect.[9]

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9 Lighter's activities include working with the reported cooperation of the U.S. House Oversight Committee related to the now three (3) firms with two sets of filed tax returns, but with each set have a difference between each pair of over $1.5 million in (un) reported income, well documented in abovesaid 5-31-91 Federal Register, which together with such prestigious cooperation resulted in former IRS Commissioner Shirley Peterson resigning effective the day of U.S. President Clinton's inauguration--stunning due to that office being so long touted as not being a political one, but rather and merely the supervisor of the country's largest accounting office--as Ms. Peterson was previously DOJ Assistant Attorney General, Tax Division; and thus responsible for the national embarrassment codified in said cited Federal Register (also specifically naming former U.S. Attorney Daniel Bent).

Said Federal Register citation, together with the abovenoted approximately 165,000 pages of evidence filed on public microfilm, detail how these matters can be seen in conjunction with and directly related to how Lighter's intervention into the Iran Contra affairs assisted in the 5 count conviction of Admiral Poindexter (supervisor to current talk show phenomenon "Ollie" North). On the day of closing arguments, during Lighter's main intervention, there are 3 pages of transcript neither sealed nor available for public review. Lighter's documents were shredded in a case about shredded documents. The efforts of Lighter, et al. aided significantly in forcing out of the vault of Aubrey Robinson, III, USDC Chief Judge of the some 100 formerly

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secret cassette tapes between CIA headquarters in Virginia and the Central America CIA Bureau. With the proof finally revealed that the CIA was actually involved in Iran Contra, former Central America CIA Station Chief Alan Fiers plea bargained to effectuate the indictment of the third highest CIA officer, Clare George. The most important and oldest internal affairs group in the DOJ, the OPR, came to visit Lighter and an attorney who had been an Assistant U.S. Attorney in Austin Texas. OPR (who later "fired" FBI Chief William Sessions after Lighter and Col. Gritz stopped the Ruby Creek Siege by challenging the bungling of Mr. Sessions and scandal laden Larry Potts, see footnote no. 5 above) was very concerned about Lighter's role in the Poindexter conviction, but was pacified when Lighter showed OPR how to track the foremost of the many tenticled Japanese business interests in Hawaii in a way that far surpassed the operations of Ronald Rewald, known by some to be a former Hawaii based CIA station chief for whom that attorney had worked with (in that case, Melvin Belli sued the CIA). OPR also visited USDC Judge David Ezra for his role with Bank of Hawaii as codified in said Federal Register citation.

Apparently, under threat of Rule 55(a) default (the issue in the instant Petition) on the Iran Contra Special Grand Jury, now Forbes Chairman Caspar Weinberger was indicted just one week before the U.S. Presidential election, and thus ensuring former CIA chief George Bush's reelection defeat. Apparently, partly due to still being faced with said threat of Rule 55(a) default, U.S. President Bush signed a number of presidential pardons. Thereafter, the U.S. District Court for the District of Montana issued its absurd agreement with the DOJ that the U.S. Grand Jury is an "adjunct" of the DOJ, par. no. 22 above.

Through the saga, DOJ retaliation escalated. Lighter and others were sued by DOJ--in a case involving the firm allegedly laundering the Royal Crown Jewels (footnote no. 2)--by the DOJ's Curtis Ching (footnote no. 7). The suit was designed to attempt to impose upon Lighter of Rule 11"frivolous filings" sanctions--similar to
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what happened to the credible Christic Institute (who assisted Lighter) faced when they kicked off the litigation that became the Iran Contra affair, which erupted 9 months later with a "spy" plane crash in Nicaragua--and strike all the pleadings (and thus credible, albeit indicting evidence) filed by Lighter and friends. Lighter's pleadings included those of two certified public accountants who were never challenged directly by any evidence or direct certified testimony, merely by coverup.

Lighter then filed tax returns formated exactly like U.S. Trustees who embezzled over $1.5 million in items often including gold. Lighter did this knowing that he could not be indicted unless also were the U.S. Trustees, Curtis Ching and the other corrupt officers and agents of the government were also: later it being discovered through FBI-FOIPA that same were former Third-Party Defendant herein Mr. Osborne together with the very same Ruby Creek Siege boss Mr. Eugene Glenn (CR 60, Ex. "1"). Thus, it was really the evidence the Mr. Glenn helped Mr. Osborne and Ching coverup that largely stopped the Ruby Creek Siege.

Despite having to publish in public financial reports where cost could be definitively traced and compared, the cost of even the stolen gold was arbitrarily written up and down by U.S. Trustees in order to hide the theft, and thus so was money publicly written up and down. Lighter and the trustees committed what the IRS calls tax fraud, but the Hawaii Federal Courts called "no wrong doing" as to 2 filed tax returns for the same business entity and same business period but with a difference of over $1.5 million in (un)reported income. Eventually, the buck stopped with abovesaid DOJ's Shirley Peterson, who upon becoming Commissioner of IRS became vulnerable to being forced to step down; which she did do on President Clinton's inauguration as noted above.

One of those sued in this matter was the Gubernatorial candidate Robert Measel, Jr. from the island of Kauai, who not only filed tax returns describing how he committed such tax fraud, but confessed and then turned himself into the U.S. Grand

(continued...)

67. Further, it is the U.S. Grand Jury who has true jurisdiction over these matters herein, rather than the Court, especially pursuant to the voluntary confession made herebelow. Overall, it is clear that this case is an obvious fraud upon the Court. There are many compelling reasons introduced or reiterated herein that should cause the Court to conclude that this case should be dismissed.

**VOLUNTARY FELONY CONFESSION OF LIGHTER VS. PLAINTIFF NOAH WOO, ET AL., PER TO 18 U.S.C. § 3501**

68. In order that there is no misunderstanding regarding LIGHTER's unavoidable position, LIGHTER hereby reiterates the following statement:

**I, Eric Aaron Lighter, hereby voluntarily confess to tax felonies committed in this case and in this court, subject only to the court's determination that the tax returns (1) for the period 10-1-89 through 6-30-93, (2) for Noah Woo and Hideo Kobayashi and the respective companies they controlled during this period, (3) are correct; and therefore Eric Aaron Lighter is feloniously wrong because both sets of tax returns can not be correct.**

69. This Circuit Court is hereby on judicial notice that, and LIGHTER

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Juries. The court ordered that he be sanctioned for daring to confess in any federal court to a felony that he actually did and proved that he did, and did so in such court. Over 3 years (an important statute of limitations period) have passed without challenge to Lighter's huge writeoffs taken to model corrupt officers and agents of the generally honest and well meaning U.S. government.

hereby voluntarily confesses to same pursuant to **18 U.S.C. § 3501(d)**, that either LIGHTER intentionally and feloniously filed false tax returns or he is correct. In the Handbook for Special Agents, Criminal Investigation Intelligence Division, Internal Revenue Service, section 345.22 states that,

> "A **judicial confession** [*emphasis added*] is one made before a court in the due course of legal proceedings, including preliminary examinations." Section 345.23 therein states, "It is essential to the admission of a confession that it be voluntary." Section 345.151 states, "Admissions made as part of the act of committing an offense are likewise based upon understated receipts from business, the cost of goods sold and other deductions shown on the tax return are considered admissions by the tax payer [U.S. v. Hornstein, *176 F 2d 217 (CA-7), 49-2 USTC 9326*; U.S. v. Stayback, *212 F 2d 313 (CA-3); 54-1 USTC 9345*] which need not be corroborated."

70. On 5-6-94, at a USDC hearing with the late Judge Harold Fong presiding, Lighter confessed directly to the Judge regarding tax matters; whereupon the hearing was over in relatively short order.

> At p. 37: "MR. LIGHTER: Your Honor, the plaintiffs didn't read the material, they didn't even read the most fundamental documents by their own admission. How can they--all that's occurred just now is a critical documents for the tax return, that are part of the tax return, have been stricken. Furthermore, I would like to have leave of the Court to file an answer, of course, with counterclaim.
>
> THE COURT: Sure.
>
> MR. LIGHTER: Thirdly, is, I didn't confess to IRS. I confessed to you my felony activities (*emphasis added*), unless you consider it--unless you want to say that the both tax returns are okay, and you have just stricken mine, or part of mine
>
> THE COURT: I've stricken it because I don't think it's responsive.
>
> MR. LIGHTER: I understand, sir, but.
>
> THE COURT: But I don't want you to, as a caution to you, it's not prudent to go around the place saying that you did something that might get you in trouble one day.
>
> MR. LIGHTER: No, it should get me in trouble right now or never, because I am confessing this felony confession to you for a

tax return, in this case, because one of us is wrong; and the material you just struck was part of the tax return that I'm claiming is correct, as I signed it and filed it."

71. The Court wrongly decided at this hearing that only the DOJ had access the U.S. Grand Jury, except for requesting the Court to appoint an independent counsel to do so. The Fifth Amendment of the U.S. Constitution disagrees, inasmuch as the Presentment function includes the U.S. Grand Jury to act on information form any source it legitimately obtains it from. The subject Third-Party Complaint, as it a properly drawn lawsuit, is probably the most formal service of reporting felony activities available in the land. Note how Lighter's confession, quoted above, gives Lighter inalienable standing to address his own felonies before a U.S. Grand Jury when he is making the most formal of all reporting thereof.[10]

> At p. 30: "THE COURT: A motion seeking grand jury is not properly addressed to this Court. Grand jury looks into criminal matters. Criminal matters can only be presented statutorily by the Department of Justice. Department of Justice is the only agency with authority to handle and take matters to the grand jury. Even this Court doesn't do anything with the grand jury, except to convene a grand jury when so requested by the United States Attorney (*emphasis added*). Of course, if the United States Attorney refuses--I don't want to encourage Mr. Lighter to get the U.S. Attorney to refuse to do anything in his matter--he can technically bring an issue before the Court, for the Court to convene a grand jury, naming an independent counsel, if the statute permits it, to handle this case. But we're far from that."

72. The Grand Jury, The Use and Abuse of Political Power, by

10 Another party went so far as to include with a bonding of the U.S. Grand Juries and his own felony confession, a photographic "mug shot" and fingerprints spread; all to no avail because the crimes were also committed by federal officers and agents therein, and the presentation was fully truthful and highly documented.

Professor Leroy D. Clark, with a forward by Senator Philip A. Hart (September 1975), is a book that describes in detail how the Grand Juries have been abused by the Executive Branch of the U.S. government for a long time, including by President Richard Nixon and corrupt officials in his administration; United States v. Dionisio, *410 U.S. 1 (1973)*, U.S. v. Clandra, *94 S.Ct. 613 (1974)*, Mapp v. Ohio, *367 U.S. 643 (1961)*, Branzburg v. Hayes, *408 U.S. 665, 725 (1972)*. Nevertheless, a true confession such as the one above overcomes even the most intense government corruption and coverup of corruption. The above confession demands focus on the paradox of the two opposing tax returns.

73. However, a *bona fide*, voluntary and wholly admissible confession such the one just pronounced provides further guaranteed standing before the U.S. Grand Jury based on the substance of the filed tax returns. The seemingly personal vendetta attacks of counsel for Plaintiffs give no such standing, despite virulent attempts to diminish Lighter's honor. Lighter is the victim. If anything, such attempts to lessen Lighter's honor only points to their efforts made to conceal crimes by those attacking Lighter.

74. There has always been support for the position that on a "principled basis", any compelled testimony is in violation of the **Fifth Amendment** privilege against self-incrimination, per Justice Douglas, incl. Ullman v. United States, *350 U.S. 422, at 446 (1956) (dissenting)*. However, this is a voluntary, material confession redundantly supported by high quality, *prima facie* evidence. **Rule 104(c)** of the Federal Rules of Evidence state

that "Hearings on admissibility of confessions shall in all cases be conducted out of the hearing of the jury." In this case, pursuant to **18 U.S.C. § 3501**, admissibility is mandatory.

## WHICH IS THE RESULTING JURISPRUDENCE SYSTEM?: INQUISITORIAL V. ACCUSATORIAL

**75.** Irking J. Kleig points out, in Constitutional Law for Criminal Justice Professionals, 1992, p. 323,

> "A question was raised as to whether a federal court can review the voluntariness of a confession. In Miller v. Fenton, *474 U.S. 104, 106 S.Ct. 445 (1985)*, the court of Appeals of New Jersey had concluded that the voluntariness of a confession is a 'factual issue' which **28 U.S.C. 2254(d)** provided was a state court finding of fact, with certain exceptions, shall be presumed correct in a federal habeas corpus proceeding...The United States Supreme Court held to the contrary. It held that the voluntariness of a confession is not an issue of fact entitled to 2254(d) presumption but is a legal question meriting independent consideration in a habeas corpus proceeding."

**76.** To continue, in order to challenge Lighter's confession, one should first realize that, **18 U.S.C. § 3501**, as well as the impact of the Miranda decision, direct that voluntariness of confession must not only be determined by judge, in voir dire on in-camera examination, but also given to the jury as an issue, if the issue is raised, or if the issue of voluntariness is present. Ex parte Cobb, *(1977, DC SC) 448 F Supp. 886, aff'd without op. (1978, CA4 SC) 568 F 2d 774.*

**77.** However, the Court should note that, under **18 U.S.C. § 3501**, the weight of the confession is left to the jury. United States v. Greer *(1978, CA5 Ala.) 566 F 2d 472, cert. den. (1978) 435 U.S. 1009.* Further, statements that are voluntary and admissible under requirements of

Miranda are similarly voluntary and admissible under requirements of 18 U.S.C. § 3501. United States v. Vigo, *(1973, CA2 NY) 487 F 2d 295.*

78. For background reference, O. John Pogge, in Why Men Confess, 1959, p. 15, notes, "In the 1930's and the following decades many confessed to communist inquisitors their guilt of a multitude of offenses." In the Korean War,

> "It was found that the interrogation tactics of the Chinese communists inevitably led to one of three things: (a) The victim's will to resist is broken, and he responds as the enemy desires; (b) The victim becomes insane; (c) The victim dies." *Id.*, deeper is p. 26,
>
> "Our method in the investigation of offenses and prosecution of deviants is basically different from the inquisition system. Referring to our method the federal Supreme Court in June 1949, on the occasion of invalidating confessions in three separate cases from three different states, South Carolina, Pennsylvania and Indiana, commented: 'Ours is the accusatorial as opposed to inquisitorial system.' Under the accusatorial method there is an insistence that the investigating authorities get their case from other sources than the mouth of the accused. Under the inquisitorial system the investigators try to get the case from this very source. The Supreme Court's comment represents more than 700, and in one sense more than 1,500 years of history. The accusatorial method owes its survival and growth to our grand and petit jury system. The one who laid the basis for our jury system was Henry II...(1154-89)." Harris v. South Carolina, *338 U.S. 68*, Turner v. Pennsylvania, *338 U.S. 62*, Watts v. Indiana, *338 U.S. 49,54.*

Even so, the voluntary confession of LIGHTER is a fine fruit all of these engineers seek, handed on a silver platter for the Grand Jury to deal with.

## CASH & OTHER BONDS PRESENTED TO FEDERAL GRAND JURIES

79. "The safeguards accorded to Article III judges were designed to protect litigants with unpopular or minority causes or litigants who belong

to a despised or suspect class'," such as whistleblower Lighter in the instant case, Pacemaker Diagnostic Clinic of America v. Instomedix, *725 F2d 537, 541 (CA9, 1984)*. The God of the Bible said, "Woe to those who decree unjust statutes and to those who continually record unjust decisions, to deprive the needy of justice, and to rob the poor of My people of their rights..." Isaiah 10:1,2.

80. A member of, and on behalf of Constitution Coalition, a national legal and political lobby group, has provided solely at his own volition and liability, a $5,000 bond in the form of a cashier's check to cover the cost of scrutiny in a few cases, including the matters of the two opposing tax returns in this instant case. Lighter did not purchase the bond, or in anyway pay for or contribute to its purchase; nor did Lighter request that the bond be purchased or provided. Lighter, however, has no objection to the U.S. Grand Juries making the requested scrutiny; and, in fact, such scrutiny should clear up a number of key issues. Lighter hereby further relies upon said U.S. Grand Jury scrutiny to investigate the key issues herein, especially the alleged fraudulent tax returns filed on the record in the instant case. A copy of only the papers for the cash bond, excluding the formal, filestamped tender offer to the clerk of the USDC, is included herewith as AP.EXS. "A00199-202". The beneficiaries of the bond are all of the U.S. Grand Juries in Hawaii and all of the U.S. Grand Juries in the District of Columbia, plus the San Francisco, California U.S. Grand Jury in Cr. 93-0592VRW. This is one of a group of other bonds separate and

distinct from the additional bond Lighter is providing, as mentioned above[11]. Said $5,000 bond further demonstrates that the U.S. Grand

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11 Apparently the USDC is so upset that it is, in a rare but desperate strategy after other DOJ corruption failed, allowing the prosecutor to try and find the perfectly sane and lucid bonding individual to be insane, which would be grounds to dismiss that individual's criminal case without addressing anything of substance. This ploy came immediately after said individual filed his complaints with the District of Columbia U.S. Grand Jury that included public references to the INSLAW bomb blueprints apparently used to destroy most of Oklahoma City's Federal Building (see no. 5). In the local case, Magistrate Barry Kurren struck vital evidence Chief Judge Kay had put under seal. That evidence--publicly filed elsewhere as well--included significant compromise of the one or more federal agencies, as well as an attorney which the record alleges bragged about having Christmas dinner with said Judge Kay, yet also disclosed he had girlfriend(s) who were on serious and addictive drugs, had drug inquires made to him on his personal phone, plus had illegal gambling at his residence. The first government psychiatrist was removed in disgrace for evidence of falsifing a report that the bonding individual was incompetent, and pursuant to defense production of a doctor's report that he was sane and competent.

One of the issues that apparently infuriated the Court was another case also bonded by that individual, a case where an IRS-CID agent allegedly murdered a defendant's partner, USDC Cr. No. 90-1466 ACK. The case appeared to be a drug and money laundering case, albeit quite contrived, but said defendant appeared with a credible corroborating witness (credible Mormon elder, sibling of murdered partner) pursuant to demand for U.S. Grand Jury scrutiny thereof, said defendant was ruled insane by Judge Kay PRIOR to a psychiatric examination, and ordered for immediate placement in a mainland mental institution. When the network television showed up in an apparent federal SWAT Team operation designed to see the surrender by defendant, Judge Kay decided that a psychiatric examination could be held first.

Juries have the capacity to sue and be sued, **Rule 9(a) FRCP**. Other bonds have been and/or are being so provided. Said Constitution Coalition and others have also expressed serious concern about a serious Petition filed 9-23-94 to the Hawaii U.S. Grand Juries by some 400 petitioners, Misc. Case No. 94-00115-DAE, which has yet to have any U.S. Grand Jury they petitioned respond to allegations of Grand Jury tampering. The abovesaid bond also included coverage for costs of scrutiny for the USDC for the District of Columbia. The reason for this includes, **(a)** the place to report tampering of a U.S. Grand Jury is to another U.S. Grand Jury, preferrably in another district, and **(b)** if it is shown, which it has been, that the U.S. Grand Juries in the District of Columbia are tampered with, and thus our nation's leaders untouchable, then much else in the country is also lawless by consequence.[12]

**GRAND JURY QUALITY EVIDENCE IGNORED BY COURT**

81. The late Judge Fong decided to ignore evidence presented by high quality Affidavits of Lighter supported by authentic and indicting exhibits. An example of this are four Affidavits of Lighter comprising AP.EXS. "A00203-260". Naturally, much more similarly high quality evidence was presented, but Lighter having brought forth the issue of U.S. Grand Jury

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12 For convenience, the scandal of U.S. Grand Jury tampering in our nation's capitol, and widespread results therefrom has been given a name, IRATEGATE. This Petition for Writ of Mandamus has been named THE UNPELICAN BRIEF by others, similar to the blockbuster movie regarding jurisprudence scandal.

tampering appears to have caused intense prejudice Lighter. It is usually only the guilty who refuse scrutiny at all costs.

82. Another source of prejudice against Lighter is Lighter well defending himself against attacks on his credibility, instead of being an easy "mark" when carrying a message the fate of American Jurisprudence may well rest upon. Lighter was sued expressly for having purported to play a vital role in the various scandals named herein, and one attorney even attempting to obtain an order against Lighter stating that he was so involved. Nevertheless, Lighter has and does have reason to go to the U.S. Grand Juries for cause. Besides the evidence named herein, Lighter was involved in high profile cases in this nation that was greatly intensified due to the chaos that exists in the Courts below regarding access to report legitimate felonies to the U.S. Grand Juries, including pursuant to the **U.S. Constitution Fifth Amendment** "Presentment" function and **18 U.S.C. § 1504**. A nice example is the 12-23-92 Affidavit of Sunny Mullis, the real "Sonny" of the television series Miami Vice, AP.EX."A000261-267". In trying to discredit Lighter, one attorney in this case later and corruptly attempted to obtain (in the similar case USDC Civil No. 93-00914-ACK) an injunction against Lighter claiming to be involved in high profile cases (others have tried similar approaches); and in order to try and stop Lighter's fraud audit herein (see related AP. EX. "A00177-236"), but where the U.S. Grand Jury should be tribunal pursuant to Lighter's fervent requests for same. However, Lighter did enter said Affidavit in both the

USA v. Randall Weaver, et al., CR-91-EJL (USDC Idaho), case and the instant case (CR No. 32, Ex. 5, Third-Party Defendant Salter was the key negotiator in having well known attorney Jerry Spence represent Mr. Weaver). This exhibit demonstrates quite credibly certain crimes by certain federal officers and agents that was (together with the involvement of Lighter and abovesaid former U.S. Presidential candidate Lt. Col. (ret.) James "Bo" Gritz) the main "behind the scenes" reasons for former FBI Director William Sessions was forced to retire by hereabove named OPR. The U.S. Grand Juries should at least be the tribunal supplemental to the USDC regarding such matters. Our founding fathers did not trust bureaucracy enough to allow it to own the U.S. Grand Juries, and thus left them independent and the ONLY real door felonies can be matured into criminal cases. Again, **what is at stake is whether access to the U.S. Grand Juries is via an inquisitorial or accusatorial system.**

**CONCLUSION**

83. There are three different Ninth Circuit USDC conclusions (four judges therein) regarding Defendants U.S. Grand Juries: **(a)** suit on them is a proper reporting, AP.EXS. "A00091-122", **(b)** they are an adjunct of the DOJ, par. no. 22 hereabove, and **(c)** they are independent of the DOJ and the District Court, AP.EXS."A00045-58","A00185-198", but suit can not be made on them, AP.EX. "A00127". The FRCP for the USDC are promulgated by the U.S. Supreme Court and have the effect of law. It is the law, therefore, that says that default must be taken against

Defendants U.S. Grand Juries. The U.S. Supreme Court needs to address these vital appeals. The prisons may well be wrongfully filling up with parties subject to clearly tampered with Grand Juries[13]. The 9th Circuit Court seems to have violated its own Circuit Rules 21, 40, 41 to not allow "motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions". Parts of the entire system inquisitional.

84. For all of the above reasons, Petitioner Lighter prays that the U.S. Supreme Court issue a Writ of Mandamus ordering the USDC for the District of Hawaii, in Civil No. 94-00179-HMF, to order the Clerk of the Court for the USDC for the District of Hawaii to enter default on the Defendants U.S. Grand Juries pursuant to the properly made request for entry of default filed 8-24-94 herein, AP.EXS."A00123-126". Petitioner Lighter prays that no (further) retaliatory action be taken by any party discussed in the instant Petition, or that further prejudice be made against Lighter for his actions; where the truth is Lighter's actions are defensive regarding being "set up" to be blamed for tortious behavior of others Lighter exposed as part of his proper duties. This Court is requested to grant the instant Petition, as what is at stake is whether access to the U.S. Grand Juries is via an inquisitorial or accusatorial system.

Respectfully submitted, Honolulu, Hawaii, June 16, 1995.

Eric Aaron Lighter

ERIC AARON LIGHTER, dba WELLS FARGO PROTECTIVE ALARM
*Sui Juris* and *In Propria Persona*

13 Footnote no. 11 bonding agent was put in prison 6-5-95, the day the third version of this Petition was delivered, per seemingly trumped up contempt charges.

## INDEX OF APPENDIX EXHIBITS


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|---|---|
| "A00001" APR 11, 1995 | Order of U.S. Court of Appeals for the Ninth Circuit denying Lighter's Petition for Writ of Mandamus |
| "A00002 - 44" FEB 14, 1995 | Lighter's Petition for Writ of Mandamus in the U.S. Court of Appeals for the Ninth Circuit |
| "A00045" DEC 16, 1993 | Letter from Lighter U.S.District Court for the District of Hawaii Chief Judge Alan C. Kay, re: Grand Juries [Ex. "A", page 9, Civ. 93-914 Answer 2/24/94"] |
| "A00046" JAN 6, 1993 | Letter from Lighter to U.S.District Court for the District of Hawaii Chief Judge Alan C. Kay , re: Grand Juries [Ex. "A", page 8, Civ. 93-914 Answer 2/24/94"] |
| "A00047" JAN 7, 1993 | Letter from U.S.District Court for the District of Hawaii Chief Judge Alan C. Kay to Lighter, re: Grand Juries [Ex. "A", page 7, Civ. 93-914 Answer 2/24/94"] |
| "A00048 - 50" JAN 11, 1993 | Letter from Lighter to U.S. District Court for the District of Hawaii Chief Judge Alan C. Kay, re: Grand Juries [Ex. "A", pages 5 and 6, Civ. 93-914 Answer 2/24/94"] |
| "A00051 - 52" FEB 7, 1993 | Letter from Lighter U.S. Attorney, re: Grand Juries [Ex. "A", page 4 Civ. 93-914 Answer 2/24/94"] |
| "A00053" FEB 8, 1994 | Letter from U.S.District Court for the District of Hawaii Chief Judge Alan C. Kay to Lighter, re: Grand Juries [Ex. "A", page 3 Civ. 93-914 Answer 2/24/94"] |
| "A00054 - 57" FEB 16, 1994 | Letter from Lighter to U.S. District Court for the District of Hawaii Chief Judge Alan C. Kay, re: Grand Juries [Ex. "A", pages 1 and 2 Civ. 93-914 Answer 2/24/94"] |
| "A00058" MAR 24, 1994 | Letter from Assistant U. S. Attorney Leslie Osborne, Jr. to Lighter [CR No. 78, Ex. "1"] |

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| "A00059 - 90"<br>JUN 18, 1994 | Lighter's Third - Party Complaint, including against Defendants Four Hawaii Federal Grand Juries and San Francisco, California Federal Grand Jury in CR 93-0592VRW [CR No. 78] |
| "A00091 - 122"<br>AUG 4, 1994 | Gregory J. Galaski's Answer, Crossclaim and Third-Party Complaint [[CR No. 112] |
| "A00123 - 126"<br>AUG 24, 1994 | Lighter's Request for Entry of Default on Third-Party Defendant Grand Juries [CR No.128] |
| "A00127"<br>AUG 24, 1994 | Order, re: no default on Defenant Grand Juries [CR No. 129] |
| "A00128 - 131"<br>AUG 26, 1994 | Lighter's Second Affidavit, re: default on Third-Party Defendant Grand Juries [CR No. 133] |
| "A00132 - 133"<br>SEP 15, 1994 | Order Denying Galaski's motion for Order Directing Entry of Default Judgment against Third-Party Defendants Grand Juries [CR No. 138] |
| "A00134 - 136"<br>OCT 11, 1994 | Galaski's Amended ExParte Motion for Entry of Default Judgment against Third-Party Defendant Grand Juries [CR No. 141] |
| "A00137 - 140"<br>OCT 12, 1994 | Order Denying Galaski's Motion For Reconsideration of Request For Entry of Default Judgment [CR No. 143] |
| "A00141 - 183"<br>NOV 18, 1994 | Lighter's Memorandum in Opposition to Motion to Dismiss Third-Party Complaint and dismissal of all all Third-Party Defendants wihtout prejudice except Third-Party Defendant Federal Grand Juries [CR No. 168] |
| "A00184"<br>DEC 20, 1994 | Order Dismissing Third-Party Complaint without prejudice against all Third-Party Defendants wihtout prejudice except Third-Party Defendant Federal Grand Juries [CR No. 187] |
| "A00185 - 198"<br>DEC 5, 1994 | Entire transcript of December 5, 1994 hearing before Judge Fong, re: Motion to Dismiss Third-Party Defendants |

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| **"A00199 - 202"** DEC 5, 1994 | Papers for $5,000 cash bond, excluding the formal, filestamped tender offer to the clerk of the U.S. District Court for the District of Hawaii |
| **"A00177 - 236"** JAN 3, 1995 | Affidavits in Lighter's Counter Motion (CR No. 195) (a) Affidavit of Lighter, re: Actual Debt Accounting of HPW, Inc, Exhibits "CA"-"CC", (b) Affidavit of Lighter, re: Affidavits of Hideo Kobayashi and Noah Woo, Exhibits "BA"-"BF", (c) Affidavit of Lighter, Re: Hideo Kobayashi, et al. And Noah Woo, et al. Being Alter Egos To HPW, Inc. [*and each other*], Exhibits "DA"-"DE" |
| JAN 13, 1995 | Affidavit of Lighter's Reply Memo (CR No. 204) Affidavit of Lighter, Exhibits "A"-"H" |
| **"A00261 - 267"** DEC 3, 1992 | Affidavit of Carson Sunny Mullis, re: Ruby Ridge |

*[Exhibit filed in similar case, USDC Civ. No. 94-914-ACK, annexed to the instant case similar to this case, USDC Civil No. 93-914-ACK, Hideo Kobayashi, et al. v. Eric Aaron Lighter, et al., February 24, 1994 Answer ("Civ. 93-914 Answer 2/24/94") filed by Lighter for Square Root of 25, Ltd.]

[FILED: *APR 6, 1995, at 9th Cir.*]

[FILED AND CERTIFIED: *APR 11, 1995, at Hawaii USDC*]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| ERIC AARON LIGHTER individually, and d/b/a Wells Farqo Protective Alarm Service Co., | ) | NO. 95-70177 |
| Petitioner, | ) | DC# CV-94-179-HMF Hawaii (Honolulu) |
| vs. | ) | |
| UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII, | ) | ORDER |
| Respondent, | ) | |
| HAWAII-PACIFIC WHOLESALERS, INC., et al., [Alleged] Real Parties in Interest. | ) | |

Before: BROWNING, SNEED and T.G. NELSCN, Circuit Judqes

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. See Bauman v. United States District Court, 557 F 2d 650 (9th Cir. 1977). Accordingly, the Petition is denied.

No motions or reconsideration, rehearing, clarification, stay of the mandace, or any other submissions shall be filed or entertained in this closed docket.

[FILESTAMPED: *RECEIVD FEB 14, 1995*
U.S. DISTRICT COURT, DISTRICT OF HAWAII]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**PETITION TO THE UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT FOR WRIT OF MANDAMUS ON THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII; EXHIBITS "A" THROUGH "S"; CERTIFICATE OF SERVICE**

1. COMES NOW ERIC AARON LIGHTER, Individually, and dba WELLS FARGO PROTECTIVE ALARM SERVICES COMPANY, ("**Lighter**"), *sui juris* and *in propria persona*, and hereby submits this Petition to and from the United States Court of Appeals of the Ninth Circuit for Writ of Mandamus on the United States District Court for the District of Hawaii, and order same to enter due default, pursuant to **Rule 55(a)** of the Federal Rules of Civil Procedure ("**FRCP**"), on Third-Party Defendants Four Hawaii Federal Grand Juries and the San Francisco, California Federal Grand Jury in Cr. 93-059VRW ("**Grand Juries**"). This Petition is brought pursuant to Rule 21 of the Federal Rules of Appellate Procedure, under the jurisdiction of **Title 28 of the United States Code** ("**U.S.C.**") **§ 1292**, and all other applicable laws and rules.

2. A Writ of Mandamus is sought to order the Honorable Harold M. Fong, judge in the U.S. District Court for the District of Hawaii, in Civil No. 94-00179-HMF, to order the Clerk of the U.S. District Court to enter default on the Third-Party Defendants Hawaii Federal Grand Juries and the San Francisco Federal Grand Jury In Cr. 93-0592VRW. It has been approximately six months since Lighter has demanded default upon said

Third-Party Defendants Federal Grand Juries, for cause, and pursuant to proper procedure and argument.

3. One of the key issues is that Lighter properly filed a corporate tax return for Defendant HPW, Inc.–based on the evidence supported by Lighter's affidavits, formal declarations and more–which alleged fraud and a difference of some $1.5 million in (un)reported income; primarily for the first fiscal year of HPW, Inc., October 1, 1989 through September 30, 1990. Lighter was duly authorized to be the Secretary and CEO of HPW, Inc., as well as the custodian of records. Further, Lighter was duly authorized to conduct an audit of and filed tax returns for HPW, Inc. The three year statute of limitations has passed on the tax return for the primary period concerned; thus removing the Court's jurisdiction to challenge Lighter's tax return except for fraud, which the Court has not done. Lighter made a felony confession to the Third-Party Defendants Federal Grand Juries, stating that if Lighter was wrong he was feloniously wrong, including pursuant to **18 U.S.C. § 3501(d)**. Lighter has also agreed that if Lighter is wrong on the tax returns he filed, that Lighter will thereafter nationally promote the thereby sanctioned tax fraud that Lighter exposed. Lighter was "set up" to be blamed for crimes actually committed by the tax fraud perpetrators.

4. Lighter's work is based, as custodian of records, on over 61 bankers boxes of records, with over seven bankers boxes being filed on

public microfilm. Plaintiffs have provided no substantive challenge, and have prevailed thus far only by the Court deciding to ignore Lighter's many affidavits (the Court ordered sums due plaintiffs but not expressly due from the first fiscal year, and no express ruling was made that Lighter's tax return's or first fiscal year accounting for HPW, Inc.) and formal declarations (pursuant to **28 U.S.C. § 1746**) and tax returns, and a huge amount of high quality, empirical evidence, as well as a felony confession made directly to the Honorable Judge Fong (at the May 16, 1994 hearing before Judge Fong). The Department of Justice told Lighter in writing that his material was presented to a sitting Federal Grand Jury in Hawaii, but Lighter has good cause to believe there was and is serious tamperment with the Federal Grand Juries in Hawaii. Lighter is and remains at serious risk of imminent indictment by one or more of the Third-Party Defendants Federal Grand Juries, even up to years from this date. Lighter has a right and duty pursuant to the Fifth Amendment of the United States Constitution for the therein provided Federal Grand Jury Presentment, in order to have access to the bring *prima facie* felony information before the Federal Grand Juries, as well as provided pursuant to **18 U.S.C. § 1504**, which states, "Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury". The Hawaii District Court's refusal to default the Third-Party Defendants Federal Grand Juries is a form of injunction against Lighter to have and confirm

access to the Federal Grand Jury for matters that leave Lighter at risk of imminent indictment, a risk arising for reasons including the mere formal reporting of felonies Lighter was "set up" to be blamed for by Plaintiffs in the instant case. Another view is that injunction has been leveled against Lighter to have and confirm access to the Federal Grand Jury until "after the coast is clear" and whistleblower Lighter alone can be indicted for crimes of those who "set up" Lighter to take the blame for their crimes. Lighter guaranteed the risk, of his indictment AND the necessity to scrutinize alleged felonies by others being exposed by Lighter, by providing a $10,000 bond and more to one or more Federal Grand Juries to cover the cost of scrutiny of their matters herein, including Lighter's felony confession; which confession provides Lighter with inalienable standing to communicate with the Federal Grand Juries, including those that are Third-Party Defendants herein. No doubt there are no minute or other orders that can be produced that prove the Third-Party Defendants Federal Grand Juries indeed even know they were sued, given any bond(s), or had petitions made to them.[1]

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1 On September 23, 1994, a petition was filed by Cathy Pergola of the Grand Jury Awareness Council, "In The United States Grand Jury For The District of Hawaii" in Misc. Case No. 94-00115-DAE, entitled Petition To the Four Federal Grand Juries For The District of Hawaii To Accept Evidence of Extrajudicial Misconduct By Officers And Agents of The United States, Including Tampering With And of the Four Federal Grand Juries For The District of Hawaii, As Detailed In Amended Tax Returns, Or In The Alternative (1) Demand to Change Venue For Competent, Non-Tampered With Grand Jury Tribunal And/Or (2) Quash Related Grand Jury Subpoenas, Exhibits "A" Through "J". The Petitioners were named in the style that is some 67 pages in length due to the large number of Petitioners. Lighter was not a Petitioner, but a witness for the Petitioners. No action has been taken by any Court on this Petition.

5. It appears that Judge Fong may hold prejudice against Lighter pursuant to Complaint of Judicial Misconduct application sent to Lighter by this Circuit Court on August 31, 1992. This application was not sent at the request of Lighter, but rather at the request of Judge Fong. Lighter did not respond to the request for complaint to the Judicial Council of the Ninth Circuit. However, Lighter was at the time involved in the matter by other parties in their attempts to take felonies to the Hawaii Federal Grand Juries while Judge Fong was then Chief Judge, and thus responsible over same. Current Chief Judge Alan C. Kay was involved with the incident.

**BACKGROUND**

6. On December 16, 1993, Lighter filed his letter to the Honorable Bankruptcy Judges Lloyd King and Jon J. Chinen, plus Hawaii District Chief Judge Alan C. Kay, regarding providing a real property bond to the Hawaii and San Francisco Federal Grand Juries, in order to cover the cost of scrutiny thereof, a true and accurate copy of the cover letter thereto annexed hereto as **Exhibit "A"**.

7. On January 6, 1994, Lighter filed with the Honorable Alan C. Kay a Memorandum to be forwarded to the Hawaii Federal Grand Juries, a true and accurate copy of the cover letter thereto annexed hereto as **Exhibit "B"**.

8. On January 7, 1994, the Honorable Alan C. Kay responded to Lighter, a true and accurate copy of same annexed hereto as **Exhibit "C"**.

9. On January 11, 1994, Lighter responded back to the Honorable Alan C. Kay, a true and accurate copy of same annexed hereto as **Exhibit "D"**. Lighter quotes from the Handbook For Federal Grand Jurors, produced by the Administrative Office of the United States Court, Washington, D.C., demonstrating again that the Federal Grand Juries are indeed independent from either the Executive or Judicial Branches of government.

10. On February 1994, Lighter wrote to the Department of Justice as the Honorable Alan C. Kay requested, a true and accurate copy annexed hereto as **Exhibit "E"**.

11. On February 8, 1994, the Honorable Alan C. Kay again responded to Lighter, a true and accurate copy annexed hereto as **Exhibit "F"**.

12. On February 17, 1994, Lighter filed with the Honorable Alan C. Kay a correction of a letter dated February 14, 1994 responding back to the Honorable Alan C. Kay, a true and accurate copy annexed hereto as **Exhibit "G"**.

13. On March 24, 1994, the Assistant U.S. Attorney Leslie E. Osborne, Jr., Department of Justice, responded to Lighter regarding my correspondence with the Honorable Alan C. Kay, a true and accurate copy annexed hereto as **Exhibit "H"**.

14. Grand Juries were sued as Third-Party Defendants herein by

Lighter on June 18, 1994, a true and accurate copy annexed hereto as **Exhibit "I"**.

15. On July 30, 1994, Third-Party Gregory Galaski filed his Answer and Third-Party Complaint, a true and accurate copy annexed hereto as **Exhibit "J"**. The April 14, 1994 Order therein filed in the U.S.D.C. for the District of Nevada, CV-S-94-00009-PMP, concludes that Mr. Galaski made a proper reporting to the Federal Grand Jury, including via his suit against the Federal Grand Jury in San Francisco, California that indicted Mr. Galaski. That case received a hung jury overwhelmingly in favor of the defendants therein, and the judge praised the jury. That case exposed at trial the matters sued for in Lighter's Third-Party Complaint, **Exhibit "I"** annexed hereto, especially by confirming the therein described Operation Phoenix. After Mr. Galaski properly responded to an Order to Show Cause, the Court could not find that Mr. Galaski be prevented from suing the Federal Grand Juries for being a purported quasi-judicial body. On the contrary, Mr. Galaski was ordered, like anyone would be, that if he or anyone "believes he has information which should be called to the attention of a Federal Grand Jury sitting at San Francisco, California, or elsewhere (emphasis added), he should communicate that information to the United States Attorney for the Federal District in question and/or the foreperson of the Federal Grand Jury at that location (emphasis added)." Lighter filed an *amicus curiae* brief in that

case, as yet unanswered. It appears now that Mr. Galaski has been reindicted in that case. Lighter has offered another bond in order to cover the cost of scrutiny by the Federal Grand Juries, and provide assurance that Lighter is not ambushed by the Department of Justice for his involvement. The bonds also demonstrate the Federal Grand Juries have the capacity to sue and be sued, **Rule 9 FRCP**. Again, even if the Federal Grand Juries are a quasi-judicial body, "quasi" means "superficially resembling but intrinsically different," Galloway v. Truewsdell, *422 P2d 237, 248 (Nev. 1983)*.

16. On or about May 1, 1992, Lt. Col. (ret.) John Stuart Salter (**"Salter"**) filed in the U.S. District Court for the District of Montana a suit against the Federal Grand Juries in the District of Columbia and Hawaii, and others, CV92-48-M-CCL. Salter made proper service upon the Defendants Federal Grand Juries using Capitol Process Services. The Department of Justice argued that the Federal Grand Juries are "an adjunct of the Executive Branch, and not the Judicial Branch of government", and certainly not independent of either branch. The U.S. District Court ordered that the Federal Grand Jury was indeed an "adjunct" of the Executive Branch. **EXHIBIT "K"** annexed hereto is comprised of documents which show the Department of Justice's absurd position that was affirmed by the U.S. District Court for the District of Montana, Salter's arguments, and proof of service by Capitol Process Services.

17. On August 23, 1994, Lighter filed the, (a) Affidavit of Eric Aaron Lighter, Re: Proof of Service Upon Four Hawaii Grand Juries, Exhibits "1" And "2", Certificate of Service; and (b) Affidavit of Eric Aaron Lighter, Re: Proof of Service Upon San Francisco Federal Grand Jury In Cr. 93-0592VRW, Exhibit "1", Certificate of Service, true and accurate copies annexed together hereto as **Exhibit "L"**.

18. On August 24, 1994, Lighter filed the Request For Entry of Default Against Defendants Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr. 93-0592-VRW, Affidavit of Eric Aaron Lighter, Entry of Default Against Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr. 93-0592VRW, Certificate of Service, a true and accurate copy annexed hereto as **Exhibit "M"**. As is observable upon inspection, said **Exhibit "M"** hereto received three filestamps, all on August 24, 1994: (a) "Received", "Lodged", and "Filed".

19. On August 24, 1994, the United States District Court for the District of Hawaii entered an order herein, a true and accurate copy annexed hereto as **Exhibit "N"**. Said **Exhibit "N"** hereto states: "COURT ACTION: EO: On request for entry of Default by Eric Lighter, against Defendants Four Hawaii Federal Grand Juries and San Francisco Federal Grand Jury, Judge Harold M. Fong advised Mr. Chinn not to enter Default. Mr. Lighter was personally informed of this by Mr. Chinn."

20. On August 26, 1994, Lighter filed the Second Affidavit of Eric Aaron Lighter in Support of Request For Entry On Default Against Four

Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr. 93-0592VRW, Exhibits "A" And "B", Certificate of Service, a true and accurate copy annexed hereto as **Exhibit "O"**, filed as a second request for default on the Grand Juries.

21. On September 15, 1994, the United States District Court for the District of Hawaii entered an order herein entitled Order Denying Motion For Order Directing Entry of Default Judgement, a true and accurate copy annexed hereto as **Exhibit "P"**.

22. On October 6, 1994, Third-Party Defendant Gregory Galaski filed his Amended Ex Parte Motion of Gregory J. Galaski for Reconsideration of Request For Entry of Default Judgment, **Rule 55(b) FRCP**, a true and accurate copy annexed hereto as **Exhibit "Q"**.

23. On October 12, 1994, the Honorable Harold M. Fong entered the Order Denying Motion of Gregory J. Galaski For Reconsideration of Request For Entry of Default Judgement, a true and accurate copy also annexed hereto as part of **Exhibit "Q"**. The claimed basis for the Court denying Mr. Galaski's request was that the damages accruing against Mr. Galaski were substantial but not yet quantifiable.

24. On November 18, 1994, Lighter dismissed without prejudice the Third-Party Complaint against certain Third-Party Defendants, all of which are officers and agents of the United States of America Executive Branch, a true and accurate copy annexed hereto as **Exhibit "R"**. In

Lighter's pleading therefore, **Exhibit "R"** hereto, Lighter's last exhibit of said pleading including his Freedom of Information Privacy Act disclosure from the Federal Bureau of Investigation (some three years late) demonstrating that Assistant U.S. Attorney Leslie Osborne, Jr. was a principal in a massive fraud upon Lighter, et al.

25. On December 5, 1994, the U.S. District Court heard oral arguments related to Lighter's dismissed without prejudice of those Third-Party Defendants so dismissed in said **Exhibit "R"** hereto. Said Third-Party Defendants were represented in said hearing by Michael Chun, Assistant U.S. Attorney, and Chief of the Civil Division in the Honolulu Office of the U.S. Attorney. At said hearing, Mr. Chun stated that his office did not represent any Federal Grand Juries unless the U.S. District Court so ordered. The Court responded that it could so order same *sua sponte*.

26. However, the court instead ordered the dismissal without prejudice Lighter's Third-Party Complaint as to only the requested Third-Party Federal Defendants pursuant to order filed December 20, 1994 herein, a true and accurate copy annexed hereto as **Exhibit "S"**. This order also states that the government made "no responsive pleading". Also part of this **Exhibit "S"** is the transcript of said December 5, 1995 hearing. This transcript demonstrates that the Federal Grand Jury is not represented by the Department of Justice. The Motion to Dismiss, etc. filed October 14, 1994 herein by the United States is also included in this

Exhibit "S", where in the government sought dismissal of the Third-Party Federal Complaint against the Third-Party Defendants Federal Grand Juries. Later, at the December 5, 1994 hearing--relevant portion of which is also made part of this Exhibit "S"--the government retreated from its position, changing its mind to state that it in fact did not represent the Defendants Federal Grand Juries.

**TAX RETURN OF PETITIONER**

27. This Petition is annexed in full, including exhibits hereto, to the personal U.S. Tax Return of Lighter for all the years not subject to the three year statute of limitations against civil assessments by the Internal Revenue Service, Badaracco, Ernest v. Com., *(1982, CA3) 693 F2d 298, 464 U.S. 386, aff'd (1984, S Ct.).* The tax return of HPW, Inc., Defendant herein, was most recently amended by Lighter on October 26, 1993 for the first fiscal year of HPW, Inc., October 1, 1989 through September 30, 1990. This HPW, Inc. amendment can not be further amended except for fraud, as the three year statute of limitations has passed, Kelly v. Com., *(1989, CA9) 877 F2d 756.*

28. Said first fiscal year HPW, Inc. tax return was one of the most important tax return brought before the herein Third-Party Defendants Federal Grand Juries. Except that it rule regarding fraud, this passing of the statute of limitation caused the U.S. District Court in the District of Hawaii to lose jurisdiction to rule on the veracity of the allegations of

Lighter regarding the first year of HPW, Inc.'s operation, the critical source year of the tax fraud alleged by Lighter. That is, Lighter alleged the tax fraud scam of HPW, Inc. was sourced mainly in the first year of operation, a story codified in the HPW, Inc. tax return filed by Lighter and amending the tax return of the tax fraud perpetrators. As a matter of law, Lighter is by law presumed correct in the allegations made in the now unchallengeable HPW, Inc. tax return, except if there is fraud. Lighter alleged fraud in the unchallengeable HPW, Inc. tax return. Lighter's allegations of fraud can not be challenged except there be fraud. Such is as a matter of law a meritorious argument pleaded by Lighter.

29. The HPW, Inc. tax returns filed by Lighter on October 26, 1993, were annexed in full, including exhibits, to the personal U.S. Tax Return of Lighter for all the years not subject to the three year statute of limitations against civil assessments by the Internal Revenue Service. The main portion of the HPW, Inc. tax returns filed by Lighter on October 26, 1993 were on multiple occasions filed, together with supporting documentation--which are all part of Lighter's personal tax return as noted above--in the Hawaii Bureau of Conveyances at the following locations (and elsewhere):

Folder 257, Doc. No. 93-143010
Folder 269, Doc. No. 93-152905
Folder 295, Doc. No. 93-176706
Folder 297, Doc. No. 93-176708
Folder 308, Doc. No. 93-181485
Folder 310, Doc. No. 94-007991
Folder 315, Doc. No. 94-104617
Folder 317, Doc. No. 94-105710
Folder 265, Doc. No. 93-146844
Folder 270, Doc. No. 93-152906
Folder 296, Doc. No. 93-176707
Folder 307, Doc. No. 93-181484
Folder 309, Doc. No. 94-007990
Folder 314, Doc. No. 94-104616
Folder 316, Doc. No. 94-104788
Folder 318, Doc. No. 94-105711

Folder 319, Doc. No. 94-106710
Folder 320, Doc. No. 94-106711
Folder 321, Doc. No. 94-106790
Folder 322, Doc. No. 94-106791
Folder 323, Doc. No. 94-107353
Folder 324, Doc. No. 94-107354
Folder 325, Doc. No. 94-107520
Folder 326, Doc. No. 94-107521
Folder 327, Doc. No. 94-108210
Folder 328, Doc. No. 94-108211
Folder 329, Doc. No. 94-108457
Folder 330, Doc. No. 94-108458
Folder 331, Doc. No. 94-108941
Folder 332, Doc. No. 94-108942
Folder 333, Doc. No. 94-109424
Folder 334, Doc. No. 94-109425
Folder 335, Doc. No. 94-110490
Folder 336, Doc. No. 94-110491
Folder 337, Doc. No. 94-111355
Folder 338, Doc. No. 94-111356
Folder 339, Doc. No. 94-111891
Folder 340, Doc. No. 94-111892
Folder 341, Doc. No. 94-112421
Folder 342, Doc. No. 94-112422
Folder 343, Doc. No. 94-112423
Folder 369, Doc. No. 95-19167
Folder 370, Doc. No. 95-19170.

**ARGUMENT**

30. **Rule 55(a) FRCP** states:

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default [*emphasis added*].

31. Therefore, **Rule 55(a) FRCP** gives neither the Clerk of the Court or the Court zero option regarding entering default. Default MUST be entered. In Enron Oil Corp. v. Diakuhara, *27 Fed Rules Serv 3d (2CA , 1992)*, entry of default was deemed proper if there was "a willful default or a refusal to proffer an excuse for not responding" or "a meritorious defense", which was not the case therein but is the case herein. Third-Party Plaintiff Lighter has been prejudiced due to the delay in default. Lighter made a felony confession in this case stating in sum that, if the tax returns Lighter filed are false then they are criminally false and Lighter demands to be indicted thereby. Thus, the Grand Jury's response, once

actually notified of the proper reporting via the Third-Party Complaint thereon, can surely result in the arrest of Lighter irrespective of the veracity of any party herein that opposes Lighter, including for reason of covering up of tax fraud committed. Lighter's allegation that his tax filing are truthful, verses those filed before him, must be view in light of the difference being over $1.5 million dollars in (un)reported income.

32. Thus, one of the meritorious arguments are that, although perhaps neither Lighter nor the Plaintiffs and cohorts are legal, it is certainly true that both sides can not have the truthful tax returns. Someone should and likely will be indicted therefore anyway. Default must be taken against the Federal Grand Juries to whom Lighter made felony confession to, in order to further assure that Lighter is not held up to Grand Jury scrutiny and indictment only at the whim of vindictive officers and agents of the federal government who ignore felony confessions as they please. Felony confessions are admissible pursuant to 18 U.S.C. § 3501(d). =====>Nevertheless, Lighter would be willing to have this court and the court below determine that Lighter filed false tax returns, and thereby approving for mass circulation the tax frauds of the tax returns Lighter opposed in this case.<=====

33. In Bleitner v. Welborn, *28 Fed Rules Serv 3d 49 (7CA, 1992)*, a default judgement was not imposed on the executive branch of the government for being a few weeks late in a habeas corpus petition

because no harm was done AND the time was relatively short with at least the appearance of excusable neglect. In the instant case, the Federal Grand Juries should have been defaulted, especially since there was no excusable neglect. In fact, Lighter alleges that the Federal Grand Juries have not answered because they were tampered with, including by not having been put on notice of the Third-Party Complaint against them; and that even in the face the March 24, 1994 letter from the Department of Justice to the contrary, Exhibit "H" hereto. The default should have been entered almost six months ago.

34. The traditional doctrine that defaults are strongly disfavored is no longer the rule in the Seventh Circuit. In fact, in order to set aside an entry of default the defendant must show good cause, quick action to correct it, and a meritorious defense to the plaintiff's complaint, O'Brien v. Sage Group, Inc., *19 Fed Rules Serv 3d 1039 (ND Ill 1991)*. Failure to appear by a corporation after process was served did not cure a default judgment in the Ninth Circuit with a statement by the firm's President that he would refer the matter to his attorney, Direct Mail Specialists, Inc. v. Exlat Computerized Technologies, Inc., *841 F2d 685 (CA9, 1988)*. In Hudson v. State of N.C., *158 F.R.D. 78 (ED NC, 1994)*, a motion to dismiss prevented a default judgement, although prejudice to plaintiff was a factor in considering exercise of the court's discretion on whether to enter default. In the instant case, Lighter is prejudiced by failure to enter

default; and no objection has been made, let alone a motion to dismiss. On the contrary, **Exhibit "S"** hereto demonstrates that neither the court nor the Department of Justice did or do now represent the defendants Grand Juries. In Beck v. Atlantic Contracting Co., Inc., *157 F.R.D. 61 (D Kan, 1994)*, the entry of default judgement was appropriate in light of evidence that defendant received proper service and failed to respond.

35. In the Motion to Dismiss, etc. filed October 14, 1994 herein by the United States, included in **Exhibit "S"** hereto, the government sought dismissal of the Third-Party Complaint against the Third-Party Defendants Federal Grand Juries. Later, at the December 5, 1994 hearing–transcript of which is also made part of **Exhibit "S"**–the government retreated from its position, changing its mind to state that it in fact did not represent the Defendants Federal Grand Juries. However, the government and the Court clearly recognized that the Third-Party Defendants Grand Juries were indeed properly served with the Third-Party Complaint. This service was perfected even if said service was also tampered with by interception of the Third-Party Complaint which resulted in the Defendants Federal Grand Juries not actually receiving said Third-Party Complaint; which appears to be the actual truth.

**CAPACITY OF THE FEDERAL GRAND JURIES**

36. Capacity, in the legal sense, means the qualification or competency of persons, natural or artificial, for the performance of civil

acts depending on their state and condition as defined or fixed by law, Hronek v. People, *24 N.W. 861, 865.* The government and the Court, pursuant to the government's pleading and the Court's response, waived the defense of capacity by not expressly so stating same as the representative of the Third-Party Defendants Federal Grand Juries; which, on the contrary, neither the Court nor the government represent by their own statements, **Exhibit "S"** hereto. In Pressman v. Estate of Steinvorth, *860 F Supp 171 (SD NY, 1994)*, the defense of lack of capacity of the party to sue or be sued is waived if not raised in a timely manner the outset of the lawsuit. The default against the Third-Party Defendants Federal Grand Juries in the instant case should have been entered almost six months ago. Failure to set forth particulars supporting plaintiff did not have requisite standing to bring suit in effect waived the capacity defense by failing to be more explicit in defendant's answer. *Id.* In Chiropractic Alliance of New Jersey v. Parisi, *854 F Supp 299 (D NJ, 1994)*, the capacity defense challenge was defeated by plaintiff pleading claims with specificity and particularity.

37. On June 18, 1994, Lighter's Third-Party Complaint against the Third-Party Defendants Federal Grand Juries expressly describes capacity with particularity, **Exhibit "I"** hereto. Moreover, on August 26, 1994, Lighter did put at explicit issue the capacity of the Third-Party Defendants Federal Grand Juries, **Exhibit "O"** hereto. Thereafter, neither the

Department of Justice nor the Court made explicit defense of the Third-Party Defendants Federal Grand Juries. On October 14, 1994, the government filed its Motion to Dismiss, etc., **Exhibit "S"** hereto, wherein the government puts itself up as the representative of the Grand Juries even to the point of requesting the Court to dismiss the Third-Party Complaint against same. The government's argument for such dismissal against Third-Party Defendants Federal Grand Juries was weak and general. Thereafter, in the December 5, 1994 hearing, the transcript of which is part of **Exhibit "S"** hereto, shows the government changing its mind and suddenly decided it no longer represented the Third-Party Defendants Federal Grand Juries. Lighter has even complied with any policy to stipulate capacity in the complaint in civil rights cases, Nix v. Norman, *879 F2d 429 (CA8, 1989)*.

38. In Wagner Furniture Interiors, Inc. v. Kemner's Georgetown Manor, Inc., *929 F2d 343 (CA7, 1991)*, the court held the defendant had waived the defense of no capacity to sue because defendant did not raise the lack of capacity to sue "by specific negative averment" in an appropriate pleading or amendment. See also Howerton v. Designer Homes by Georges, Inc., *950 F2d 281 (CA5, 1992)*, where the district court even entered judgement in every capacity of a corporate defendant after corporation was named a defendant "in every capacity". The government, in its October 14, 1994 Motion to Dismiss, etc., **Exhibit "S"**

hereto, failed to make such specific negative averment, but rather made only bald, weak and general demand for dismissal of the Third-Party Complaint against the Third-Party Defendants Federal Grand Juries.

39. In Eisenburg v. District Attorney of the County of Kings, *847 F Supp 1029 (ED NY, 1994)*, entry of default judgement was technically improper because entry of default was not entered first, and delay in answering complaint was not willful. Perhaps Gregory Galaski, Third-Party Defendants Federal herein, should have done this also and would thereby have avoided denial by the Hawaii District Court, see **Exhibits "J", "P", and "Q"** herein. However, Lighter ONLY and PROPERLY requested entry of default and not default judgement. The Third-Party Defendants Federal Grand Juries could not have committed a willful delay if they were tampered with, and no Complaint was given to them even though service was properly made upon both the Jury Administrator for the U.S. District Court AND the Department of Justice. It should be noted, however, that Mr. Galaski has valid arguments that no doubt should have caused the default and default judgement on the Grand Jury defending against Mr. Galaski's complaint. Even a sensible and efficient use of supervisory power by the Federal Court is invalid if it conflicts with constitutional or statutory provisions, **Rule 55(a), FRCP**, see paragraph no. 23 above, Bank of Nova Scotia v. U.S., *108 S.Ct. 2369 (CA9, 1988)*.

40. In fact, dismissal of an indictment for non-constitutional error

is appropriate if it is established the violation substantially influenced grand jury's decision to indict, or there is grave doubt that the decision to indict was free from substantial influence of such violation, **52(a) FRCP**, *Id.* Dismissal of indictment may be proper even when no actual prejudice has been shown to have resulted from prosecutorial misconduct before the grand jury, as long as there is evidence that challenged authority was something other than an isolated incident unmotivated by sinister ends, or that the type of misconduct challenged has been "entrenched and flagrant" in the circuit, U.S. v. Serubo, *604 F2d 807 (CA3, 1979).*

41. Further, once default is entered, the only option the Court has, pursuant to **Rule 55(c) FRCP**, to avoid entering judgment is in the instance of the party being either a minor or incompetent. The question of whether a party is a minor or not is simple. By definition the grand jury is composed of citizens who are expressly not minors. Should the Grand Jury be deemed incompetent, then the question arises as to how anyone in the same district could ever be validly indicted. **Exhibit "O"** hereto contains Lighter's discussion regarding how the Clerk of the Court must enter a default against the Third-Party Defendants Federal Grand Juries, just as if a "rock or a myna bird were sued". If the Grand Juries are incompetent, perhaps there are rouge Federal Grand Jury forepersons signing indictments.

42. The issue of bonding the Third-Party Defendants Federal

Grand Juries is vital to consideration of the capacity of these defendants to sue and be sued. No defense of immunity has been offered. No defense of lack of capacity has been offered. The Department of Justice and Court agree, **Exhibit "S"** hereto, that the Department of Justice could represent the Federal Grand Juries, albeit even if only ordered to do so. The Third-Party Defendants Federal Grand Juries have, as an entity and by components, the capacity (a) to be represented, (b) to hold property, (c) to operate separately from the Court and the Department of Justice, (d) are composed entirely of adults, and (e) are presumably of sound mind. The Federal Grand Juries have rejected no bonds, and do have expenses for conducting their scrutiny of matters before them. These expenses are similar to the operation of any administrative body composed solely of citizens not bureaucratically aligned with the agency associated therewith, in this case the Court.

43. Even if the Federal Grand Juries are adjudicated a quasi-judicial body, there is no immunity from suit except same be affirmatively made, and certainly no immunity for actions outside of the scope of the law. Tampering with Federal Grand Juries, and allowing tampering with Federal Grand Juries is obviously and by law a felony. Intercepting the federal mail, valuable bond(s), valid lawsuit, and felony related information due the Federal Grand Juries is certainly tampering with Federal Grand Juries. Lighter has no defense against vindictive, tampering-based

indictment(s) unless the Federal Grand Juries can indeed conduct its presentment function without corruption and coverup of corruption by forces and entities that certainly are not the Federal Grand Juries.

44. To continue, certainly the Federal Grand Jurors can hold property, and the Federal Grand Jury as an entity has significant cost and expenses. The Federal Grand obtains its budget from the U.S. Treasury, but so also do ordinary trial juries in federal cases, and this does not make them part of the U.S. government *per se*. There is not only a separation of powers in the Branches of government, but a separation between the government and the people. The Federal Grand Jurors are the people, not the government. The people, however vested with certain powers from the Court, are not the Court. Quasi bodies can sue and be sued.

45. Lighter has offered another bond in order to cover the cost of scrutiny by the Federal Grand Juries, and provide assurance that Lighter is not ambushed by the Department of Justice for his involvement. The bonds also demonstrate that the Federal Grand Juries have the capacity to sue and be sued, **Rule 9 FRCP**.

**THE REAL PROBLEM**

46. The real problem is not that the Federal Grand Juries can sue or be sued, they can. The real problem is that the Federal Grand Juries, when sued or petitioned, have such suits or petitions intercepted so that the Federal Grand Juries never even know they were sued, petitioned, or

provided with a bond to cover the cost of scrutiny in the presentment function. The real problem is so severe that not even felony confessions can be provided to the Federal Grand Juries without same being intercepted when such confessions even slightly implicate officers and agents of the federal government. Such coverup of corruption, as in the instant case, is certainly tampering with Federal Grand Juries.

**GRAND JURY IS INDEPENDENT**

47. The issue of whether the Grand Jury is independent from the Department of Justice and the Court is well settled in this Circuit Court. Annexed hereto by reference is the Handbook for Federal Grand Jurors, published by the Administrative Office of the United States Courts, Washington, D.C. 20544. **Exhibit "D"** hereto makes important quotes from this book. On page seven thereof it states, "(1) Matters may be brought to the attention [of the Grand Jury] in three ways: (1) by the United States Attorney or his assistants; (2) by the court that impaneled it [*emphasis added*]; and (3) from the personal knowledge of a member of the grand jury or from matters properly brought to a member's personal attention. In all these cases, the grand jury must hear evidence before taking action." On page twenty-three thereof, it states, "Just as it is hoped and expected that you will serve as the balance wheel between the power of the government and the interests of personal liberty [*emphasis added*], it is also expected that you will achieve an appropriate balance in the

exercise of your powers." On page twenty-four thereof, it states, "Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney [*emphasis added*], the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's office [underline added]." On page thirty-four, it states, Within your prescribed sphere, you occupy an important and independent office in the administration of justice. The government attorneys cannot dominate or command your actions. The court may guide, but cannot dominate or command your actions [*emphasis added*]".

48. These are important matters. **Exhibits "A" through "I"** hereto clearly show that Judge Kay was incorrect in intercepting the grand juries's mail, **39 U.S.C. § 3001**. The Chief Judge supervises and impanels the grand juries. The Chief Judge is responsible to forward communications to the grand juries, and same is in no way judicial intervention. Judge Kay cites two cases. In U.S. v. Chanen, *549 F 2d 1306 (9th Cir. 1977)*, this case elucidates how, "under constitutional scheme, grand jury is not and should not be captive to any of the three branches of government." However, the court "must compel grand jury witness to testify if, after appearing, such witness refuses to do so."

Regarding the U.S. v. Chanen case, in Federal Grand Jury Practice, March 1983, William French Smith, Attorney General, Department of Justice, page 72, it states, "Chanen offers an excellent discussion of the supportive and complementary roles [supposed to be] played by court and prosecutor with respect to the work of the grand jury. The discussion supports the description of the **grand jury being 'supervised' by the court** rather than as an appendage of it [*emphasis added*]. The district court may properly deny a grand jury use of subpoenas to engage in 'the indiscriminate summoning of witnesses with no objective in mind and in the spirit of meddlesome inquiry' and may curb a grand jury when it clearly exceeds its historic authority. Hale v. Henkel, *201 U.S. 43, 63 (1906).*" The Grand Jury is impaneled by the Court pursuant to **Rule 6(a)**, Federal Rules of Criminal Procedure.

49. The other case cited by Judge Kay is In Re Antitrust Grand Jury Investigations, *714 F.2d 347, 350 (4th Cir. 1983).* This case focuses on concerns regarding quashing a grand jury subpoena or otherwise determining whether the Grand Jury has misused its subpoena process. This in no way relates to the matter of the Grand Jury supervisor merely passing on the mail to the Grand Jury. However, Lighter has every right to be concerned with the question, did the Department of Justice really deliver Lighter's material to a sitting Federal Grand Jury as it promised in **Exhibit "H"** hereto. The Department of Justice, by its own admission was

working with Judge Kay on this matter. In the instant case, the Department of Justice has changed it mind on whether it represents the Grand Jury, just at the Court changed its mind on whether it can intercept rather than pass on the Grand Jury's federally protected mail.

50. Further, in regards to the court's supervisory or administrative function in said Federal Grand Jury Practice, page 6, it states, "Rule 6(c) provides: 'The court shall appoint one of the jurors to be foreman and another to be deputy foreman.' USAM 9-11.340." The court's supervision can be broad. On page 26 of said Federal Grand Jury Practice, it states, "D. Disclosure Under Court Order: Rule 6(e)(3)(C)(i), 1. General Rule, Disclosure of otherwise non-disclosable matter is permitted under rule 6(e)(3)(C)(i) when the court so directs 'preliminarily to or in connection with a judicial proceeding.' Judge Learned Hand, in the seminal case, defined "judicial proceeding" as follows: [T]he term 'judicial proceeding' includes any proceeding determinable by a court, having for its object the compliance of any person, subject to judicial control, with standards imposed upon his conduct in the public interest, even though such compliance is enforced without the procedure applicable to the punishment of crime. Doe v. Rosenberry, *255 F.2d 118, 120 (2d Cir. 1958) (emphasis added)*." On page 71 of said Federal Grand Jury Practice, fit states that "3. Power limited by district court, The grand jury is under the supervision of the courts. The grand jury must rely on the district court's

subpoena and contempt powers, because it lacks its own enforcement power. Brown v. United States, *359 U.S. 41 (1959).*" and "Although a matter should not be presented to a grand jury in a district unless it has venue, the grand jury may investigate matters even though they occurred partly outside the district. A witness cannot challenge the right of the grand jury to inquire into events that happened in another district. Blair v. United States, *250 U.S. 273, 282-3 (1919)*; In re May 1972 San Antonio Grand Jury, *366 F. Supp. (W.D. Tex., 1973).* The grand jury has jurisdiction to investigate a conspiracy if it appears that it was formed in the district or any overt act occurred within the district. **18 U.S.C. Section 3237** [*emphasis added*]; Hyde v. Shine, *199 U.S. 62 (1905)*; Downing v. United States, *348 F.2d 594 (5th Cir.) cert. denied 382 U.S. 901 (1965).*" Thus, venue can even overlap or be changed as appropriate. Riddle: who do you turn a tampered with federal grand jury over to? Answer: another federal grand jury in another venue.

51. The grand jury relies upon the court for delivery of its mail. The grand jury is under at least quasi supervision of the Chief Judge, here Judge Alan C. Kay. Asking Judge Kay to forward the mail to the grand jury was proper and timely, especially when a voluntary felony confession supported by redundant, *prima facie* and high quality evidence was included. To thwart such a confession could be construed to be tantamount to Misprision of Felony, **18 U.S.C. § 4**, or accessory after the

fact, **18 U.S.C. § 3**. The grand jury has jurisdiction to investigate the matters herein, and in fact was presented same by the Department of Justice, see **Exhibit "H"** hereto.

52. The Department of Justice may not circumvent the safeguard of the Federal Grand Jury by overreaching conduct which deprives the Federal Grand Jury of autonomous and unbiased judgement, U.S. v. Al Mudarris, *695 F2d 1182 (CA9, 1983)*. The prosecutor may not, by making prejudicial remarks to sway the Federal Grand Jury, deny an accused his right to have his indictment be tested by the Federal Grand Jury's independent judgement, *Id.* It is constitutionally required that an indictment be returned from a legally constituted and unbiased Federal Grand Jury, U.S. v. Samango, *607 F2d 877 (CA9, 1977)*. There is no serious way the Federal Grand Jury can actually be unbiased when it is not allowed to receive suits against it, petitions to it, felony confessions made to it, bonds to it in order to cover its cost of scrutiny, and other felony information sent to it through the Federal mail. For example on the other side of the same coin, a prosecutor may not make statements or argue in a manner calculated to inflame the Federal Grand Jury unfairly against the accused, U.S. v. Hogan, *712 F2d 757 (CA2, 1983)*. Dismissal of an indictment is justified to achieve either of two objectives; to eliminate prejudice to a defendant or, pursuant to court's supervisory power, to prevent prosecutorial impairment of Federal Grand Jury's independent

role, *Id.*, U.S. v. Kilpatrick, *821 F2d 1456 (CA10, 1987).*

53. Access to the Federal Grand Jury is constitutionally protected. The Federal Grand Jury may investigate every available clue to find if a crime has been committed. Such investigation may be triggered by hearsay including tips, rumors, evidence proffered by the prosecutor, or by personal knowledge of the Federal Grand Jurors themselves, Schwartz v. U.S. Dept. of Justice, *494 F Supp 1268 (ED Penn, 1980).* The Court cannot interfere with the prerogatives of the Federal Grand Jury unless there is a clear basis in fact and law for doing so, *Id.*, which in the instant case there is no such basis or any such basis claimed. The same applies to the Department of Justice.

54. The two provisos often used to measure prosecutorial use of hearsay, for example, are (a) that the prosecutor does not deceive grand jurors as to `the shoddy merchandise they are getting so they can seek something better if they wish,' or (b) that the case does not involve `a high probability that with eyewitness rather than hearsay testimony the grand jury would not have indicted,' U.S. v. Estepa, *471 F2d 1132 (SD NY, 1972).* There has clearly been significant, material and prejudicial interference with the Third-Party Defendant Federal Grand Juries in the instant case. Overstatements by witnesses can also cause dismissal of an indictment, *Id.*

**CONTEMPT PROCEEDINGS CAN BE INSTITUTED**

55. Lighter's Third-Party Complaint was issued with a Summons, which is a Court Order. The parties who interfered with delivery to the Third-Party Defendants Federal Grand Juries by intercepting the federal mail, valuable bond(s), valid lawsuit, and felony related information due the Federal Grand Juries, also obstructed said Summons. Contempt of Court proceedings could be instituted therefore. More detail is seen in Federal Grand Jury Practice, March 1983, William French Smith, Attorney General, Department of Justice, page 158, it states under Non-routine ex parte motions, "Most civil contempt proceedings fall under **28 U.S.C. § 1826**, controlled by statute with developing procedural niceties. See In re Sadin, *509 F2d 1252 (2d.Cir. 1975)*; United States v. Hawkins, *501 F.2d 1029 (9th Cir.), cert. denied, 419 U.S. 1079 (1974)*, which held that due process rights created under Fed. R. Crim. P. 42(b) must be observed under **28 U.S.C. § 1826**. (1) Counsel, (2) Some sort of notice of proceeding and consequence, (3) Chance to demonstrate `just cause' for refusal to comply: (a) 5th Amendment, (b) Attorney-Client, (c) Other privileges, (d) Privacy, (e) Illegal wiretaps, (f) Flaw in service, (g) Flaw in grand jury, (h) Prosecutorial abuse, misconduct, (i) Oppressive. Note: Substantive law is same as if witness had moved to quash on all of these items."

**FRAUDULENT RETURN OFTEN REQUIRES FILING A RETURN THE PREPARER BELIEVES IS FALSE**

56. In the, Handbook for Special Agents, Criminal Investigation

Intelligence Division, Internal Revenue Service, annexed hereto by reference (filed with original answer of Lighter) section 418.11 and 418.12, it states in part, "A person who willfully makes and subscribes, under penalty of perjury, any return, statement, or other document which he/she does not believe to be true and correct, as to every material matter, commits a criminal offense," see **26 USC § 7206**, Fraud and False Statements; note also the related section **18 U.S.C. § 7207**. "(1) The elements of a criminal violation under this Code section are: (a) Making and subscribing a return, statement or other document under penalty of perjury; (b) Knowledge that it is not true and correct as to every material matter; (3) Willfulness." Lighter's felony confession conclusively establishes Lighter's intention.

57. In Federal Grand Jury Practice, published by the Department of Justice, March 1983, page 5, "The grand jury has been afforded the broadest latitude in conducting its investigations...supervised by the district court...In a joint tax and narcotics grand jury investigation approval [for Department of Justice participation] for the tax investigation must be obtained through the Tax Division...Moreover, approval [for Department of Justice participation] for RICO charges, **18 U.S.C. Sections 1961-1968**, must be obtained from the Attorney General or his agent (Organized Crime and Racketeering Section, Criminal Division)." The instant case is a case regarding RICO allegations.

58. Lighter's Affidavits and Declarations, ignored by the Court below, show this to be a tax case involving the equivalent of seventy (70) forty foot (40') seagoing containers of heavy inventory missing in about four (4) years, which equals about half (1/2) a mile of containers. There are no invoices signed for almost $8 million in transactions between Plaintiffs and cohorts. There are:

- forged checks
- a contrived warehouse eviction
- attempted "clean up" of crimes and removal of records via bankruptcy
- overwhelming alter-ego operations between alleged vendor and vendee evidenced by a huge cloud of interchangeable names, addresses, phone numbers, employees, business cards, invoices, statements, tax return documents, checks, etc.
- missing corporate stock supposed to be in a bank escrow
- Twilight Zone computer run billings
- fraudulent police report and/or bribery/coercion/blackmail/other to withdraw true police report charges
- double books to induce liquor sales*, etc.
- checks to HPW, inc. missing due to being sent to Plaintiffs post office box despite protest

* Fedway v. U.S., *976 F 2d 1416 (D.C.Cir. 1992).*

59. In other words, there is no possibility that Plaintiffs have no idea what happened to the $1.5 million plus that is missing from Defendant HPW, Inc., the same $1.5 million that Lighter claims is missing at risk of a long prison term. That is, Plaintiffs knew or should have known that their tax returns, based upon their financial relationship with HPW, Inc., were fraudulent when they filed them. Lighter and Plaintiffs each know approximately the same financial facts, but with two very different allegations. **IT IS VIRTUALLY IMPOSSIBLE THAT AT LEAST ONE PARTY IS NOT LYING.**

60. Lighter and media across this country are eagerly looking forward to this Court formally announcing that two tax returns for the same business entity, including Schedule C for individuals filing form 1040s, and the same business period, can now coexist without conflict. This would be true. even though they are over $1.5 million different in (un)reported income. The tax course has been long in preparation, but a Parade Across America is about to be truly launched that will support the official position of the United States already detailed in the May 31, 1991 Federal Register, pages 24836-43.

61. This Petition, together with all exhibits annexed hereto by reference and annexed by attachment are hereby annexed to the tax return of HPW, Inc. The **26 USC § 6103(b)(1)** discusses how a "return" is any return, estimated tax declaration, information return or refund claim

which is filed by, on behalf of, or with respect to any party. A return also includes any amendment or supplement to the return, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return. **26 USC § 6103(b)(2)(A) and (B)** discusses how a tax return, including for a corporation, needs "return information", which is, in part, a taxpayer's identity, the nature, source or amount of its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments and tax payments, whether the return is, was or will be examined or investigated, or any other data with respect to a return or determination of the existence of the liability of any party for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, plus any part of any written determination or any background file document relating to such written determination, which is not open to public inspection, Church of Scientology v. IRS, *569 F Supp 1165 9th Cir. 1986), cert. granted (1987, S Ct) 479 US 1063.*

62. It may well be true that, "It is not within the power granted to federal courts to right every wrong that may be inflicted on individuals in our society, and a judge is not knight-errant, roaming at will in pursuit of his own ideal of beauty and goodness." McFarlin v. Newport Special School Dist., *784 F. Supp. 589 (E.D.Ark. 1992).* However, it is the Defendants that were victimized by Plaintiffs. Mere "huff and puff", "smoke and mirrors", "red herrings" and tantrums by Plaintiffs do not bring

back the embezzled money or cure the problem of two very different tax returns that will indict Lighter if Lighter is incorrect.

63. Further, it is the Federal Grand Jury who has true jurisdiction over these matters herein, rather than the Court, especially pursuant to the voluntary confession made herebelow. Overall, it is clear that this case is an obvious fraud upon the Court. There are many compelling reasons introduced or reiterated herein that should cause the Court to conclude that this case should be dismissed.

**VOLUNTARY FELONY CONFESSION OF LIGHTER VS. PLAINTIFF NOAH WOO, ET AL., PURSUANT TO 18 U.S.C. § 3501, see 5/31/91 Federal Register, pp. 24836-43**

64. In order that there is no misunderstanding regarding LIGHTER's unavoidable position, LIGHTER hereby reiterates the following statement:

> I, ERIC AARON LIGHTER, HEREBY VOLUNTARILY CONFESS TO TAX FELONIES COMMITTED IN THIS CASE AND IN THIS COURT, SUBJECT ONLY TO THE COURT'S DETERMINATION THAT THE TAX RETURNS (1) FOR THE PERIOD OCTOBER 1, 1989 THROUGH JUNE 30, 1993, (2) FOR NOAH WOO AND HIDEO KOBAYASHI AND THE RESPECTIVE COMPANIES THEY CONTROLLED DURING THIS PERIOD, (3) ARE CORRECT; AND THEREFORE ERIC AARON LIGHTER IS FELONIOUSLY WRONG BECAUSE BOTH SETS OF TAX RETURNS CAN NOT BE

CORRECT.

65. This Circuit Court is hereby on judicial notice that, and LIGHTER hereby voluntarily confesses to same pursuant to **18 U.S.C. § 3501(d)**, that either LIGHTER intentionally and feloniously filed false tax returns or he is correct.

66. In the Handbook for Special Agents, Criminal Investigation Intelligence Division, Internal Revenue Service, section 345.22 states that, "A **judicial confession** [emphasis added] is one made before a court in the due course of legal proceedings, including preliminary examinations." Section 345.23 therein states, "It is essential to the admission of a confession that it be voluntary." Section 345.151 states, "Admissions made as part of the act of committing an offense are likewise based upon understated receipts from business, the cost of goods sold and other deductions shown on the tax return are considered admissions by the tax payer [U.S. v. Hornstein, *176 F 2d 217 (CA-7), 49-2 USTC 9326*; U.S. v. Stayback, *212 F 2d 313 (CA-3); 54-1 USTC 9345*] which need not be corroborated."

67. The Grand Jury, The Use and Abuse of Political Power, by Professor Leroy D. Clark, with a forward by Senator Philip A. Hart (September 1975), is a book the describes in detail how the grand juries have been abused by the Executive Branch of the United States government for a long time, including by President Richard Nixon and

corrupt officials in his administration; United States v. Dionisio, *410 U.S. 1 (1973)*, U.S. v. Clandra, *94 S.Ct. 613 (1974)*, Mapp v. Ohio, *367 U.S. 643 (1961)*, Branzburg v. Hayes, *408 U.S. 665, 725 (1972)*. Nevertheless, a true confession such as the one above overcomes even the most intense government corruption and coverup of corruption. The above confession demands focus on the paradox of the two opposing tax returns.

68. However, a *bona fide*, voluntary and wholly admissible confession such the one just pronounced provides further guaranteed standing before the federal grand jury based on the substance of the filed tax returns. The seemingly personal vendetta attacks of counsel for Plaintiffs give no such standing, despite virulent attempts to diminish Lighter's honor. Lighter is the victim. If anything, such attempts to lessen Lighter's honor only points to their efforts made to conceal crimes by those attempting to attack Lighter.

69. There has always been support for the position that on a "principled basis", any compelled testimony is in violation of the Fifth Amendment privilege against self-incrimination, per Justice Douglas, incl. Ullman v. United States, *350 U.S. 422, at 446 (1956) (dissenting)*. However, this is a voluntary, material confession redundantly supported by high quality, *prima facie* evidence. **Rule 104(c)** of the Federal Rules of Evidence state that "Hearings on admissibility of confessions shall in all cases be conducted out of the hearing of the jury." In this case, pursuant

to **18 U.S.C. § 3501**, admissibility is mandatory.

69. Irving J. Klein points out, in Constitutional Law for Criminal Justice Professionals, 1992, page 323, "A question was raised as to whether a federal court can review the voluntariness of a confession. In Miller v. Fenton, *474 U.S. 104, 106 S.Ct. 445 (1985)*, the court of Appeals of New Jersey had concluded that the voluntariness of a confession is a "factual issue" which **28 U.S.C. 2254(d)** provided was a state court finding of fact, with certain exceptions, shall be presumed correct in a federal habeas corpus proceeding...The United States Supreme Court held to the contrary. It held that the voluntariness of a confession is not an issue of fact entitled to 2254(d) presumption but is a legal question meriting independent consideration in a habeas corpus proceeding."

70. To continue, in order to challenge Lighter's confession, one should first realize that, **18 U.S.C. § 3501**, as well as the impact of the Miranda decision, direct that voluntariness of confession must not only be determined by judge, in voir dire on in-camera examination, but also given to the jury as an issue, if the issue is raised, or if the issue of voluntariness is present. Ex parte Cobb, *(1977, DC SC) 448 F Supp. 886, aff'd without op. (1978, CA4 SC) 568 F 2d 774.*

71. However, the Court should note that, under **18 U.S.C. § 3501**, the weight of the confession is left to the jury. United States v. Greer *(1978, CA5 Ala.) 566 F 2d 472, cert. den. (1978) 435 U.S. 1009.* Further,

statements that are voluntary and admissible under requirements of Miranda are similarly voluntary and admissible under requirements of 18 U.S.C. § 3501. United States v. Vigo, *(1973, CA2 NY) 487 F 2d 295.*

72. For background reference, O. John Pogge, in Why Men Confess, 1959, pages 15, notes, "In the 1930's and the following decades many confessed to communist inquisitors their guilt of a multitude of offenses." In the Korean War, "It was found that the interrogation tactics of the Chinese communists inevitably led to one of three things:

(a) The victim's will to resist is broken, and he responds as the enemy desires;
(b) The victim becomes insane;
(c) The victim dies."

*Id.*, page 26 it illustrates deeper, "Our method in the investigation of offenses and prosecution of deviants is basically different from the inquisition system. Referring to our method the federal Supreme Court in June 1949, on the occasion of invalidating confessions in three separate cases from three different states, South Carolina, Pennsylvania and Indiana, commented: 'Ours is the accusatorial as opposed to inquisitorial system.' Under the accusatorial method there is an insistence that the investigating authorities get their case from other sources than the mouth of the accused. Under the inquisitorial system the investigators try to get the case from this very source. The Supreme Court's comment represents more than 700, and in one sense more than 1,500 years of history. The accusatorial method owes its survival and growth to our

grand and petit jury system. The one who laid the basis for our jury system was Henry II...(1154-89)." Harris v. South Carolina, *338 U.S. 68*, Turner v. Pennsylvania, *338 U.S. 62*, Watts v. Indiana, *338 U.S. 49,54*. Even so, the voluntary confession of LIGHTER is a fine fruit all of these mechanics seek, now handed on a silver platter for the grand jury to deal with.

**CASH BOND PRESENTED TO FEDERAL GRAND JURIES**

73. "The safeguards accorded to Article III judges were designed to protect litigants with unpopular or minority causes or litigants who belong to a despised or suspect class'," such as whistleblower Lighter in the instant case, Pacemaker Diagnostic Clinic of America v. Instomedix, *725 F2d 537, 541 (CA9, 1984)*. The God of the Bible said, "Woe to those who decree unjust statutes and to those who continually record unjust decisions, to deprive the needy of justice, and to rob the poor of My people of their rights..." Isaiah 10:1,2.

74. A member of, and on behalf of Constitution Coalition, a national legal and political lobby group, has provided solely at his own volition and liability, a $5,000 bond in the form of a cashier's check to cover the cost of scrutiny in a few cases, including the matters of the two opposing tax returns in this instant case. Lighter did not purchase the bond, or in anyway pay for or contribute to its purchase; nor did Lighter request that the bond be purchased or provided. Lighter, however, has no objection to the Grand Juries making the requested scrutiny; and, in fact, such scrutiny should clear up a number of key issues. Lighter hereby

further relies upon said Federal Grand Jury scrutiny to investigate the key issues herein, especially the alleged fraudulent tax returns filed on the record in the instant case. A copy of the bond is included at the end of **Exhibit "S"** hereto. The beneficiaries of the bond are all of the Federal Grand Juries in Hawaii and all of the Federal Grand Juries in the District of Columbia, plus the San Francisco, California Federal Grand Jury in CR 93-0592VRW. This is a bond separate and distinct from the additional bond Lighter is providing, as mentioned in paragraph no. 15 on page 5 above. Said $5,000 bond further demonstrates that the Federal Grand Juries have the capacity to sue and be sued, **Rule 9 FRCP**. Said Constitution Coalition has also expressed concern about a serious Petition filed Spetember 23, 1994 to the Hawaii Federal Grand Juries by some 400 petitionors, Misc. Case No. 94-00115-DAE, which has yet to be responded to allegations of Grand Jury tampering.

**CONCLUSION**

75. There are three different Ninth Circuit District Court conclusions regarding the Third-Party Defendant Federal Grand Juries: (a) suit on them is a proper reporting, **Exhibit "J"** hereto, (b) they are an adjunct of the Department of Justice, **Exhibit "K"** hereto, and (c) they are independent of the Department of Justice and the District Court, **Exhibit "S"** hereto, but suit can not be made on them, **Exhibit "N"** hereto. The Rules of the District Court are promulgated by the U.S. Supreme Court

and have the effect of law. It is the law, therefore, that says that default must be taken against the Third-Party Defendant Federal Grand Juries. The Ninth Circuit Court of Appeals needs to address these vital appeals. Also, the prisons may well be wrongfully filling up with parties subject to clearly tampered with Grand Juries.

76. For all of the above reasons, Petitioner Lighter prays that this Circuit Court issue a Writ of Mandamus ordering the U.S. District Court for the District of Hawaii, in Civil No. 94-00179-HMF, to order the Clerk of the Court for the U.S. District Court for the District of Hawaii to enter default on the Third-Party Defendant Federal Grand Juries pursuant to the properly made request for entry of default filed August 24, 1994 herein, **Exhibit "M"** hereto. Petitioner Lighter prays that no retaliatory action be taken by any party discussed in the instant Petition for Writ of Mandamus, or that further prejudice be made against Lighter for his actions; where the truth is that Lighter's actions are defensive regarding being "set up" to be blamed for tortious behavior of others Lighter exposed as part of his proper duties.

DATED: Honolulu, Hawaii, February 14, 1995.

/S/
ERIC AARON LIGHTER, Individually, and dba
WELLS FARGO PROTECTIVE ALARM
*Sui Juris* and *In Propria Persona*

[Exhibits "A" THROUGH "S"; Certificate of Service, Verification and Jurat omited in reprinting]

[Filestamped: *RECEIVED DEC 16, 1993*]

Eric Aaron Lighter
P O Box 2556
Honolulu, Hawaii 96804
pager 299-8204

December 16, 1993

a. Honorable Lloyd King
Honorable Jon J Chinen
U S Bankruptcy Court; PJKK Federal Building
300 Ala Moana Boulevard; Honolulu, Hawaii 96850

b. Honorable Alan Kay, Chief Judge
U S. District Court
PJKK Federal Building
300 Ala Moana Boulevard; Honolulu, Hawaii 96850

Re: Bk. No 87-386, In re: Royal Hawaiian Heritage Co.

Your Honors,

Please be advised of the enclosed Deed that further bonds my allegations and supports my request for a six month extension to perfect my appeal. Also enclosed is my related December 7, 1993 letter to attorney Randolph Slaton, should you desire further explanation. Further, I appears that the Bankruptcy Court should probably not be the one ruling on an extension of appeal perfection, but rather the U.S. Ninth Circuit Court of Appeals. At any rate, I am pleased to inform you of the additional bonding to the various Grand Juries who should now have more reason to more fully scrutinize the issues involved.

Sincerely,

/S/

Eric Aaron Lighter

enclosure
cc: parties in the case; various Federal Grand Jury Forepersons involved; U S Ninth Circuit Court of Appeal

[Filestamped: *RECEIVED JAN 6, 1994*]

# MEMORANDUM

TO : CHIEF JUDGE ALAN C. KAY AND THE GRAND JURY
CLERK, U.S. DISTRICT COURT FOR THE DISTRICT OF HAWAII
FROM: ERIC AARON LIGHTER
DATE: JANUARY 6, 1993

Greetings,

Please be advised of the filestamped copy following pleading filed Januarv 4, 1993 in Civ. No. 93-00914 DAE:

ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL; DEMAND FOR HONEST FEDERAL GRAND JURY TO COMPREHENSIVELY SCRUTINIZE THE EVIDENCE IN THIS CASE; REQUEST TO DISMISS CASE OR IN THE ALTERNATIVE FOR ARBITRATION; REQUEST FOR DECLARATORY RULING REGARDING HPW, INC. TAX RETURNS; DECLARATION OF ERIC AARON LIGHTER; EXHIBITS "A", "B" AND "C; CERTIFICATE OF SERVICE.

Please give this complete pleading to Chief Judge Alan C. Kay.

Please give each of the four envelopes to the four (4) forepersons of the four Federal Grand Juries for the District of Hawaii. In each envelope is a copy of the entire pleading without exhibits. Please inform each of the said forepersons see examine the exhibits to the pleading in the casefile or in the office of Chief Judge Alan C. Kay. My overnight filing instructions requesting that the grand juries each receive a copy of the pleading was somehow overlooked. This is to complete the Certificate of Service promise to deliver the pleading.

Sincerely, /S/ Eric Aaron Lighter, enclosures

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII; POST OFFICE BOX 50128
HONOLULU, HAWAII 96850

CHAMBERS OF ALAN C. KAY, CHIEF JUDGE
TELEPHONE (808)541-1904, FAX (808)541-1178

January 7, 1994

Mr. Eric Aaron Lighter
P. O. Box 2556
Honolulu, Hawaii 96804

Re: Civil No. 93-00914-DAE

Dear Mr. Lighter:

This is in response to your memorandum dated December 6, 1993 requesting this Court to "give each of the four envelopes to the four forepersons of the four Federal Grand Juries for the District of Hawaii."

If you wish the envelopes to be given to the forepersons of the Federal Grand Juries, you should contact the U.S. Attorneys Office, as it is charged with the responsibility of implementing and supervising grand jury investigations.

Your four envelopes may be retrieved from the Clerks Office.

Very truly yours,

/S/

Alan C Kay

ACK:ask

Eric Aaron Lighter
P.O. Box 2556
Honolulu, Hawaii 96804

January 11, 1994

Honorable Alan C. Kay, Chief Judge
U.S. District Court for the District of Hawaii
Post Office Box 50128; Honolulu, Hawaii 96850

Certified Mail, Return Receipt Requested: P 109 461 811

Your Honor,

Thank you for your letter dated January 7,1994 in response to my letter to you dated January 16, 1993. In response to your letter, let us refer to the HANDBOOK FOR FEDERAL GRAND JURORS, by the Honorable C. Clyde Atkins, Chief Judge, U.S. District Court for the Southern District of Florida, dated May, 1980. For the benefit of any reader of this letter, said book is published by the U.S. Government Printing Office and distributed by the Administrative Office of the United States Court, Washington, D.C. 20544. Important excepts therein are as follows:

Page Seven:

"(1) Matters may be brought to the attention [of the Grand Jury] in three ways: (1) by the United States Attorney or his assistants; (2) by the court that impaneled it; and (3) from the personal knowledge of a member of the grand jury or from matters properly brought to a member's personal attention. In all these cases, the grand jury must hear evidence before taking action."

Page Twenty Three

"Just as it is hoped and expected that you will serve as the balance

wheel between the power of the government and the interests of personal liberty [underline added], it is also expected that you will achieve an appropriate balance in the exercise of your powers."

Page Twenty Four

"Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney, the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's office."

Page Thirty Four:

"Within your prescribed sphere, you occupy an important and independent office in the administration of justice. The government attorneys cannot dominate or command your actions. The court may guide, but cannot dominate or command your actions. "

Inasmuch as there have been strong allegations and evidence demonstrating criminal wrongdoing from and arising from the U.S. Attorney's Office, it is imperative that you forward the hand-delivered MAIL (correspondence) of the Federal Grand Juries directly to them. Please forward the packages to the Federal Grand Juries as requested or return them to the Grand Jury Clerk who is already instructed to give the envelopes to the Federal Grand Jury Forepersons.



A00049

Sincerely,

/S/ Eric Aaron Lighter

cc: Federal Grand Jury Clerk, U.S. District Court for the District of Hawaii
U.S. Attorney's Office, District of Hawaii
parties to the related cases, as appropriate to avoid ex parte action herein
Lt. Col. (ret.) John Salter, Investigator for Credit Bureau International, Inc.

**MEMORANDUM**

To : U.S. Attorney for the District of Hawaii
From : Eric Aaron Lighter, ph. (808) 538-6771
Date : February 7, 1994
Certified Mail, Return Receipt Requested: P 101 585 670

Greetings:

On January 4, 1994, in U.S. District Court for the District of Hawaii, Civil. No. 93-00914, I filed my Answer To Complaint And Demand For Jury Trial; Demand For Recusals; Demand For Honest Federal Grand Jury To Comprehensively Scrutinize The Evidence In This Case Or In The Alternative For Arbitration; Request For Declaratory Ruling Regarding HPW, Inc. Tax Returns; Declaration Of Eric Aaron Lighter; Exhibits "A", "B" AND "C"; Certificate of Service, original filestamped copy enclosed.

On the Certificate of Service is listed the four Hawaii Federal Grand Jury Forepersons in order to present this matter before said Grand Juries. On January 21, 1994 I filed in said case my Declaration of Eric Aaron Lighter Regarding More Fraud By Hideo Kobayashi; Exhibits "A", Through "E"; Certificate of Service. This also was prepared for said Grand Juries, original filestamped copy enclosed.

On January 7, 1994, U.S. District Chief Judge Alan C. Kay sent me the attached letter asking me to send my 1/4/94 Answer to your office, copy attached. On January 11, 1994 I sent my two page reply, also attached hereto.

There is no doubt that Judge Kay has tampered with the mail of the Federal Grand Juries. On January 21, 1994 I picked up my 1/4/94 Answer

plus the four packages I sent to said Grand Juries. Without prejudice to my position in my 1/21/94 letter to Judge Kay, I hereby deliver to you my 1/4/94 Answer, my 1/21/94 Declaration, plus the four packages to said Grand Juries. The packages to said Grand Juries also have enclosed a copy of this letter.

Please forward the mail for said Grand Juries to said Grand Juries. I thank you in advance for not contributing to Grand Jury tampering.

Please indict me or the Hideo Kobayashi/Noah Woo group. We have both legitimately filed four years of tax returns for the same business entity, HPW, Inc., and for the same business period. The two tax return groups are some $1.5 million different in reported income. Perhaps you would like to further ratify the PBS Ruling (see 5/31/91 Federal Register, pages 24836 to 24843) and say that there is no wrongdoing in this case either.

Sincerely,

/S/

Eric Aaron Lighter

cc: Honorable Alan C. Kay, Chief Judge, USDC Hawaii
Honorable David A. Ezra, Judge, USDC Hawaii
Magistrate Barry M. Kurren
Randolph Slaton, Esq.
Lt. Col. (ret.) John Salter
Other parties

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII; POST OFFICE BOX 50128
HONOLULU, HAWAII 96850

CHAMBERS OF ALAN C. KAY, CHIEF JUDGE
TELEPHONE: (808) 541-1904, FAX 541-1178

February 8, 1994

Mr. Eric Aaron Lighter
P. O. Box 2556
Honolulu, Hawaii 96804

Re: Civil No. 93-00914-DAE

Dear Mr. Lighter:

This is in response to your letter of January 11, 1994. Absent unusual circumstances constituting a "compelling reason" or a "clear basis in fact and law" warranting judicial intervention, the Court should not intervene in the grand jury process. In Re Antitrust Grand Jury Investigation, 714 F.2d 347, 350 (4th Cir. 1983); United States v. Chanen, 549 F.2d 1306 (9th Cir.), cert. denied, 434 U.S. 825 (1977). Without reviewing the information you wish presented to the grand jury, the Court is unable to reach such a determination. Accordingly, kindly informthe Court whether you wish it to review the information in your sealed envelopes.

Very truly yours, /S/ Alan C. Kay

ACK:ask

[Filestamped: *RECEIVED FEB 17, 1994*]

**MEMORANDUM**

| | | |
|---|---|---|
| To | : | Honorable Alan C. Kay, Chief Judge, USDC Hawaii |
| From | : | Eric Aaron Lighter, ph. (808) 538-6771 |
| Date | : | February 16, 1994 |
| Re | : | Civil No. 93-00914-DAE |

Your Honor,

This is a corrected for spelling, etc. letter correcting the February 14, 1994 letter to you. Thank you.

Sincerely,

*/S/*

Eric Aaron Lighter

**MEMORANDUM**

To : Honorable Alan C. Kay, Chief Judge, USDC Hawaii
From : Eric Aaron Lighter, ph. (808) 538-6771
Date : February 14, 1994
Re : Civil No. 93-00914-DAE
Certified Mail, Return Receipt Requested: P 101 585 671

Your Honor,

Thank you for your letter dated February 8, 1994, copy attached. Before I received you letter I sent six pages to the Hawaii U.S. Attorney, and as you requested, together with the four **unsealed** packages and the related pleadings. A copy of the six pages I sent are also attached. I need to address your February 8, 1994 letter, as follows:

1. I never asked you to review the mail to the Hawaii Federal Grand Juries, merely to pass on the mail to them. I gave you a copy of the mail, together with the related pleadings, for the convenience of said Grand Juries and yourself. .

2. The packages were **not sealed**, and you had an identical set. The packages were left unsealed in the event you wanted to check their mail before you passed the mail on to said Grand Juries.

3. **You can not now review any packages except by asking the Hawaii U.S. Attorney to forward same, as you had the US District Court Clerk send back the entire bundle to me.** I received said bundle late on January 21, 1994, after I filed my Declaration in this case.

4. **Please ask the Hawaii Federal Grand Juries to INDICT me or the Hideo Kobayashi/Noah Woo group. There are two set of tax returns,**

my and theirs. The two sets of returns are at least $1.5 million different in (un)reported income.

5. I agree the Federal Grand juries are independent, and so is their mail. However, I have given you a compelling reason to investigate this matter. This is at least the fourth time that I have presented two sets of tax returns for a single business entity and a same business period, where each set of returns is over $1.5 million different in (un)reported income: see 5/31/91 Federal Register, pages 24836 to 24843.

I believe you are prejudiced against me, and that is why the mail to the Hawaii Federal Grand Jury was intercepted, unfortunately in a wrongful and extrajudicial manner. This results in the ability or need to change venue to Federal Grand Juries in other districts.

When a (about six inches thick) Citizen's Warrant for Citizen's arrest was presented against you twice by Danny Hashimoto and Loren Hardy, you stated on the record to the effect that you knew I wrote and otherwise composed the document; see USDC Hawaii, Cr. No. 90-01466. In that case, the alleged murder of Hardy's inventor partner by a Special Agent for the Internal Revenue Criminal Investigation Division was never resolved. The credible corroborating witness still stands ready to testify. Further, in that case you adjudicated one of the Hardy brothers as insane before any psychiatric examination; and only the press showing up on the Courthouse sets at about 8:00 at night prevented that Hardy brother from

being sent away for some nine months in a hellish federal mental institution (the psychiatric exam and testimony later showed he was mentally just fine, albeit that LaMarr Hardy was a federal informant).

The case involving 10,000 acres of Hana, Maui land and water rights was a farce that apparently caused the Royal Crown jewels that were being laundered through Royal Hawaiian Heritage Jewelry company to be returned. I went to the Ninth Circuit Court in San Francisco and discovered that the Court had tampered with one or more important orders in that case; which I reported to the Chief Judge there in a highly evidentiary fashion. Hawaiian High Priest (kahuna) Edward Kaiwi invoked a Citizen's Warrant for Citizen's Arrest on Hawaii USDC Judge David A. Ezra on Hawaii public television from this temple (heiau) in Kauai. My Kaiwi alleged you were directly involved in the ruckus.

I hold nothing against you, Judge, but do need to be in communication with the Federal Grand Juries in an impartial way. I have confessed to committing or conspiring to commit the same felonies as the corrupt federal officers and agents involved. I have standing in front of the Federal Grand Juries for multiple reasons, including for the reason that I cannot or should not be denied an audience with same, 18 U.S.C. § 1504.

Sincerely,

/S/

Eric Aaron Lighter

cc: appropriate parties

[SEAL]

U.S.Department of Justice
United States Attorney
District of Hawaii

300 Ala Moana Blvd., Box 50183
Honolulu, Hawaii 96850 [phone numbers]

March 24, 1994

ERIC A. LIGHTER
P.O. Box 2556
Honolulu, Hawaii 96804

Dear Mr. Lighter:

Please be advised that the various materials that you have sent to this Office and the Chambers of Chief United States District Court Judge ALAN KAY have been delivered to the foreperson of a Sitting Grand Jury here in the District of Hawaii. I am sure that if the Grand Jury wishes any additional input, they will contact you.

Very truly yours,

ELLIOT ENOKI
United States Attorney

By_____/S/_____
LESLIE E. OSBORNE
Assistant U.S. Attorney

cc: HONORABLE ALAN C. KAY
Chief U.S. District Court Judge

[Filestamped: *JUN 18, 1994*] [Caption of Third-Party Complaint, Answer and Demand for Jury Trial, Counterclaim and Crossclaim, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**ERIC AARON LIGHTER'S, INDIVIDUALLY AND DBA WELLS FARGO PROTECTIVE ALARM SERVICE'S, THIRD-PARTY COMPLAINT AGAINST (1) LT. COL. (RET.) JOHN STUART SALTER; (2) GREGORY GALASKI; (3) FOUR HAWAII FEDERAL GRAND JURIES; (4) SAN FRANCISCO, CALIFORNIA FEDERAL GRAND JURY IN CR. 93-0592VRW, AND THE FOLLOWING, PERSONALLY AND PROFESSIONALLY: IN THE HONOLULU, HAWAII INTERNAL REVENUE OFFICE, (5) ROBERT AH NEE, DISTRICT DIRECTOR; (6) DEBRA NOLAN, CHIEF OF EXAMINATION; (7) MAURICE SHIMONISHI, PSP CHIEF; (8) HENRY KOJIMA, EXAMINATION GROUP 001 CHIEF; PLUS, (9) LESLIE OSBORNE, JR., ASSISTANT U.S. ATTORNEY, HONOLULU OFFICE; FOR WRIT OF MANDAMUS AND OTHER RELIEF; EXHIBITS "1" AND "2"**

COMES NOW, ERIC AARON LIGHTER, individually, and dba WELLS FARGO PROTECTIVE ALARM SERVICES COMPANY ("Lighter"), *sui juris* and *in propria persona*, who is the party beneficially interested, for Third Party Complaint against (1) LT. COL. (RET.) JOHN STUART SALTER ("Salter"); (2) GREGORY GALASKI ("Galaski"); (3) FOUR HAWAII FEDERAL GRAND JURIES ("Hawaii Grand Juries"); (4) SAN FRANCISCO, CALIFORNIA FEDERAL GRAND JURIES IN CR. 93-0592VRW ("S.F. Grand Juries"), AND THE FOLLOWING, BOTH PERSONALLY AND PROFESSIONALLY: IN THE HONOLULU, HAWAII INTERNAL REVENUE OFFICE, (5) ROBERT AH NEE, DISTRICT DIRECTOR; (6) DEBRA NOLAN, CHIEF OF EXAMINATION; (7) MAURICE SHIMONISHI, PSP CHIEF; (8) HENRY KOJIMA, EXAMINATION GROUP 001 CHIEF; (9) PLUS LESLIE OSBORNE, JR., ASSISTANT U.S. ATTORNEY, HONOLULU OFFICE, allege and aver as

follows:

1. Lighter brings these federal claims or issues under Section 3501 of Title 18 of the United States Code ("U.S.C."), 28 U.S.C. §§ 1331, 1357 and 1651, and the Fifth Amendment of the United States Constitution arising upon Third Party Plaintiffs' *prima facie* evidence and allegations requiring the protection of the revenue base of the United States of America, as authorized under 28 U.S.C. § 1357. Lighter's federal claim or issue satisfies Article III standing requirements involving threatened or actual injury to the revenue base of the United States of America, or from other putatively illegal action which the Court may find. O'Shea v. Littleton, 414 U.S. 488 (1974), Veterans' Industries, Inc. of Long Beach Cal. v. Lynch, 8 Cal.App.3d 902, 88 Cal.Rptr. 303,317. The Third Party Defendants other than Salter and Galaski are named in this Third Party Complaint for damaging Lighter while being threat to the revenue base of the United States. The matter involves two sets of tax returns for the same business entity and same business period, for three separate firms, including Defendant HPW, Inc.; with nearly the same format for each set, and each set having over $1.5 million difference in (un)reported income.The following parties, other than Salter and Galaski, failed and refused to take appropriate action on same since January 3, 1994 in all cases, and since early 1989 in some cases.

**PARTIES**

2. Third Party Plaintiff Lighter is an adult America Citizen and a resident of both Hawaii and Nevada, who can be contacted through the address of Post Office Box 2556, Honolulu, Hawaii 96804. Lighter is a

well documented Witness to important Congressional matters, a "white collar crime investigator" with Credit Bureau International, Inc., a Hawaii corporation, and an individual generally well known to uphold the personal rights of individuals other than himself in various aspects of criminal law and procedure.

3. Third Party Defendant Salter is an was at all times relevant herein, an individual residing in the States of Oregon and Montana, and related to the PBS Ruling described herebelow. Additionally, Salter is an analyst reviewing the alleged to be discovered felonies committed by Plaintiffs herein. Salter has redundantly asked the other Third Party Defendants who are directly officers and agents of the United States of America, for audit and prosecution of the herebelow described PBS Ruling, including via litigation involving the Hawaii Grand Juries.

4. Third Party Defendant Galask is and was at all times relevant herein, an individual residing in the State of Nevada. Galaski has redundantly asked the officers and agents of the United States of America, for audit and prosecution of the herebelow described PBS Ruling, including litigating against the S.F. Grand Juries, which grand jury did and is related to issuance of an indictment in said CR. 93-0592VRW--the so called Pilot Connection case, where the Department of Justice apparently claimed widely in the media that over 10,000 people will be audited and more indicted--where property interests associated with this case--at 2299 Roundtop Drive, Honolulu, Hawaii, where Plaintiffs have a second mortgage related to demands of Plaintiffs in their Complaint filed March 4, 1994 herein--were used as a bond to cover the costs of scrutiny, by said



A00061

S.F. Grand Jury, of a number of the matters herein. Galaski sued the S.F. Grand Juries in the U. S. District Court for the District of Nevada in that certain still open case CV-S-94-00009-PMP, and especially named Plaintiff Noah Woo and related parties for intentionally interfering with said bond to the S.F. Grand Jury.

5. Third Party Defendant Hawaii Grand Juries are and were at all times relevant herein, duly impaneled Federal Grand Juries sitting in the United States District of Hawaii, pursuant to the Fifth Amendment of the original, organic U. S. Constitution, as amended, incorporated by reference herein.[1]

6. Third Party Defendant S.F. Grand Jury is and was at all times relevant herein, duly impaneled Federal Grand Juries sitting in the United States District of Northern California, pursuant to the Fifth Amendment of said original, organic United States Constitution, as amended, incorporated herein by reference. Federal Grand Juries only have jurisdiction over felony matters, which are alleged by Lighter to have been

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1 Said organic U.S. Constitution includes the apparently missing Thirteenth Amendment proposed in 1810, when there were 17 states in the Union and only 13 states had to ratify same. By the time the War of 1812 had broken out, twelve states had ratified that Amendment. On March 12, 1819, Virginia published the 13th Amendment as ratified. Between 1819 to 1876, at least 26 separate states and territories published 76 separate editions of the Constitution that included the 13th Amendment. The original 13th Amendment, which was never legally repealed, reads, "If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatsoever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them." The 14th Amendment ratification appears defective, Dyett v. Turner, 439 P.2d 266,272, State v. Phillips, 540 P.2d 936, 941, House Congressional Record for June 13, 1967, pages 15641, *et seq.*, 28 Tulane Law Review 22, 11 South Carolina Law Quarterly 484. In addition, the 16th Amendment was not duly ratified according to highly cited The Law That Never Was, Vol. I & II, Benson & Beckman.



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committed this case by either Lighter or Plaintiffs and cohorts. Both Hawaii Grand Juries and S.F. Grand Jury are designated to perform the function of their office in compliance with their oath and charge made to same by their supervising Court, including this Court, and pursuant to requirements specified in the Handbook for Federal Grand Jurors.[2]

7. The following parties, who are and were at all times relevant herein, each an individual residing in the State of Hawaii, are named personally and professionally, which parties are employed by the United States of America, Department of Treasury, in the Honolulu, Hawaii office of the Internal Revenue Service: (a) Robert Ah Nee, District Director, (b) Debra Nolan, Chief of Examination Division, (c) Maurice Shimonishi, Chief of Planning and Special Procedures Division, and (d) Henry Kojima, Chief of Examination Division Group 001. These parties failed and refused to audit any of the three sets of dual tax returns described below, most recently those for defendant HPW, Inc.; and thus damaging Lighter in ways described below.

8. Leslie Osborne, Jr. ("Osborne"), who was at all relevant times herein an individual residing in the State of Hawaii, is named personally and professionally, and which party is employed by the United States of America, in the Department of Justice, as an Assistant U.S. Attorney, District of Hawaii. Osborne is prominently noted in the herein described

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2 Handbook for Federal Grand Jurors, by the Honorable C. Clyde Atkins, Chief Judge, U.S. District Court, Southern District of Florida, May 1980, published by the U.S. Government Printing Office and distributed by the Administrative Office of the United States Court, Washington, D.C. 20544, which is annexed hereto in full by reference in order to remind the Federal Grand Juries named herein how the Third Party Plaintiffs–and Plaintiffs herein for that matter–are a threat to the tax base of the United States of America.



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90,000 pages on microfilm in the Hawaii Bureau of Conveyances. Osbone committed significant corruption and coverup of corruption, together with former Honolulu Federal Bureau of Investigation ("FBI") Supervising Special Agent Eugene Glenn (now Special Agent in Charge in Salt Lake City, Utah), as the public now clearly reflects, especially pursuant to the recent ("FBI") Freedom of Information Privacy Act disclosure delivered recently to Lighter from the Washington, D.C. FBI office. A separate action, or an amendment of this action, may result arising from the damages to Lighter arising therefrom. Evidence supporting these allegations was filed in this Court.

**COUNT I**

9. Third Party Plaintiffs refer to the allegations contained in Paragraphs 1 through 8, inclusive, and incorporate same as though set forth herein.

10. The Third Party Defendants herein are fully on notice of the May 31, 1991 Federal Register, pages 24836 to 24843, incorporated in full herein by reference, including exhibits named therein, which details the PBS Ruling. The PBS Ruling is essentially a **SECOND INTERNAL REVENUE CODE RULING**, where even two sets of tax returns for the same business entity and same business period is acceptable, even when each set of same are over $1.5 million different in (un)reported income[3]. The Third Party Defendants herein save for Salter and Galaski, forced

3 The three firms with two filed sets of tax returns each, with each set being over $1.5 million different in (un)reported income are herein defendant HPW, Inc., Royal Hawaiian Heritage Jewelry Company, Inc. ("Royal"), and B & P Realty, Inc. ("B&P"). In all three cases, Lighter prepared and/or signed and filed the tax returns challenging the significant tax fraud of the other filed tax returns.

Lighter--and for that matter, Salter and Galaski-- into defending PBS Ruling due to said Third Party Defendants' lack of prosecution against the two tax return paradox . In other words, Lighter, Salter and Galaski have been forced to actually commit, or to support the significant and felonious violation--and the vital confession to same--of the Internal Revenue Code as originally written prior to the PBS Ruling. This was done in order to prove that Lighter and the Third Party Defendants, other than Salter and Galaski, have by their acts and words declared that (a) there is one Internal Revenue Code for the privileged and another for the masses, and (b) there is one U. S. Constitution for the privileged and another for the masses. The paradox of the two tax returns for the same business entity and same business period being approved and ratified is dramatic proof, especially since this occurs in the face of refused audit by Main Third Party Defendants other than the Grand Juries.

Lighter hereby alleges that Main Party Defendants have damaged Lighter by Third Party Defendants forcing Lighter (and associates) into making felony confessions of significant tax fraud, in order to attempt to enforce the Internal Revenue Code applicable to HPW, Inc. (plus Royal and B&P), or as applicable to PBS Ruling. The Main Third Party Defendants have failed and refused to not only determine which (set) of tax return(s) is/are correct, but which law is correct, i.e. Internal Revenue Code as written or as practiced pursuant to more than one federal order as the PBS Ruling.

11. Salter, through no fault of his own, is named herein for stipulation purposes only that he could not see an audience with the

Federal Grand Juries sitting at Honolulu, Hawaii, especially regarding the PBS Ruling. This includes the fact that Salter intended and still intends to testify that Plaintiff Noah Woo and cohort Hideo Kobayashi, are a serious threat to the revenue base of the United States of America. Lighter is informed and believes that Salter will stipulate to facts concerning the activities of certain corrupt Hawaii tax officials associated with the PBS Ruling, and other activities related directly or indirectly to the PBS Ruling. Lighter is informed and believes that Salter will stipulate to certain corrupt activity of counterfeit counsel for Defendant HPW, Inc., Randolph Slaton, that Plaintiffs herein are attempting to promote in furtherance of their scheme to damage the revenue base of the United States. Salter was also forced by Third Party Defendants into making felony confessions of significant tax fraud, in order to attempt to enforce the Internal Revenue Code applicable to HPW, Inc. (plus Royal and B&P), or as applicable to PBS Ruling. The Main Third Party Defendants have failed and refused to not only determine which (set) of tax return(s) is/are correct, but which law is correct, i.e. Internal Revenue Code as written or as practiced pursuant to more than one federal order as the PBS Ruling. Lighter was forced to support Salter's paradoxical position, at risk of imprisonment therefore. In other words, the record in the 90,000 pages on microfilm and elsewhere demonstrates that Salter made extremely intense efforts to report the matters herein to the Federal Grand Juries and to the officer and agents of the United States, including to more than one of the Main Third Party Defendants hereto; but Salter was blocked by significant corruption and coverup of corruption. This damaged Lighter,

who, along with Salter, is being even being sued by the Department of Justice for also reporting these matters, including reporting as to the tax returns paradox herein for returns never audited.

12. Galaski, through no fault of his own, is named herein for stipulation purposes only that he could not seek an audience with the Federal Grand Jury sitting at San Francisco, California, including in CR93-0592VRW, especially regarding the PBS Ruling, pertaining to his own Federal Grand Jury reporting recognized by Declaratory Order of the United States District Court for the District of Nevada, Civil No. CV-S-94-00009-PMP (RJJ), dated April 12, 1994 and served April 14, 1994. This includes the fact that Galaski intended and still intends to testify that Plaintiff Noah Woo and cohort Hideo Kobayashi, are a serious threat to the revenue base of the United States of America. Lighter is informed and believes that Defendant Galaski will stipulate to facts concerning the activities of certain corrupt tax officials associated with the PBS Ruling, and other activities related directly or indirectly to the PBS Ruling. Galaski was also forced by Third Party Defendants into making felony confessions of significant tax fraud, in order to attempt to enforce the Internal Revenue Code applicable to HPW, Inc. (plus Royal and B&P), or as applicable to PBS Ruling. The Main Third Party Defendants have failed and refused to not only determine which (set) of tax return(s) is/are correct, but which law is correct, i.e. Internal Revenue Code as written or as practiced, pursuant to more than one federal order, as the PBS Ruling. Lighter was forced to support Galaski's paradoxical position, at risk of imprisonment therefore, especially in the face of what is probably the largest criminal tax case in

America today, said CR. 93-0592VRW. In other words, the record in the herein noted 90,000 pages on microfilm, and elsewhere, demonstrates that Galaski made extremely intense efforts to report the matters herein to the Federal Grand Juries and to the officer and agents of the United States, including to more than one of the Main Third Party Defendants hereto; but Galaski was blocked by significant corruption and coverup of corruption. This damaged Lighter, who is being even being sued by the Department of Justice for also reporting these matters, including reporting as to the tax returns paradox herein for returns never audited.

**COUNT II**

13. Third Party Plaintiffs refer to the allegations contained in Paragraphs 9 through 12, inclusive, and incorporate same as though set forth herein.

14. All third party defendants other than Salter and Galaski ("Main Third Party Defendants") have damaged and are damaging Lighter. The Main Third Party Defendants have the duty to process justice regarding the new rejected felony confessions, *prima facie* evidence of *mens rea* and obvious, significant crime.

15. **Lighter is at risk of immediate, long term imprisonment due to the wanton disregard, etc. of law by Main Third Party Defendants**, the two sets of tax returns and the felony confessions brought to Main Third Party Defendants. The mere fact that neither party in the opposing tax returns paradox is indicted, under threat of indictment, or even challenged based on the record, is proof that the named Federal Grand Juries have been tampered with in some way(s), and the other

Main Third Party Defendants have failed and refused to conduct their duties pursuant to statute, oath, ethics or professionalism, and in fact in extra-executorial manners resulting in personal liability as well. Lighter was forced by Third Party Defendants into making felony confessions of significant tax fraud, in order to attempt to enforce the Internal Revenue Code applicable to HPW, Inc. (plus Royal and B&P).

16. Regarding the Main Third Party Defendants other than the grand juries, said parties are duly authorized officers and agents of the United States of America, authorized to impose and enforce tax law and violations thereof, and to prepare for presentation or make presentation to the federal grand juries regarding obvious felonies. Such felonies were presented by Lighter and Salter in some 90,000 pages filed on public microfilm at the Hawaii Bureau of Conveyances. These filings have been noticed to all parties in this case, including the Court. The entire 90,000 pages of evidence is annexed hereto by attachment, see main index as Document No. 94-003954, filed January 10, 1994 under the Affidavit of Eric Aaron Lighter. Therein is also proof that the Regional U.S. Postal Inspector in San Bruno, California approved promotion of the PBS Ruling, another act necessarily in the face of the failure of said defendants failing in their posts as noted herein.

17. The Main Grand Jury Defendants other than the grand juries, have failed and refused to (a) AUDIT HPW, Inc. (plus Royal and B&P), each with two sets of filed tax returns for the same business and same business period, but with a difference in each set of over $1.5 million in (un)reported income, (b) ASSESS and (c) COLLECT (significant sums

of) **TAXES DUE**. This results in a threat to the revenue base of the United States, in violation of 18 U.S.C.§ 1357. Both tax returns can not be correct. On the face, both tax returns appear correct, both were signed under penalty of perjury pursuant to related statutes in Title 26 of the U.S.Code, aka Internal Revenue Code. Both tax returns appear, ostensibly, pursuant to Generally Accepted Accounting Principles. Again, both tax returns can not be correct. Neither one is labeled frivolous. There has been no audit, apparently in defiance to challenge to the legitimate demand of Lighter to have HPW, Inc.–plus Royal (where Lighter is supported by filed, unchallenged affidavits of certified public accountants) and B&P as well–pay significant taxes. Both tax return (sets) must be audited. Neither return has been audited, or has any prospect of being audited according to almost six years of federal officers and agents refusing to audit either tax return in the any of the three sets of paradox tax returns filed: HPW, Inc., Royal and B&P.

No determination has been made by federal officers and agents that either return in each set of the paradox tax returns filed is deemed frivolous. In fact, both sets of tax returns in each of the three sets is by fact, deed, and law deemed ratified at this time in at least two of the three sets of paradox tax returns. **This should be impossible, especially since none of the tax returns were ever audited.** The tax returns are important because they consolidate virtually all allegations in this case and the case related to this case, Hawaii U.S. District Court Civil No. 93-00914-ACK, due to both cases alleged to be primarily regarding financial matters.

18. The damage to Lighter includes Main Third Party Defendants forcing Lighter to participate and be liable, including criminally liable, for felony violation of statutes, including 18 U.S.C. § 1357, which states,

> "The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property on account of any act done by him, under Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any State."

Lighter contends that the Plaintiffs herein committed felonies that Lighter was damaged. At least one set of opponents, Lighter or Plaintiffs herein and cohorts, are alleged wrongdoers. Lighter therefore alleges that failure to audit, assess, collect, indict, and convict, or any of these, has caused Lighter to be damaged by Plaintiffs herein. The failure and refusal of the federal officers and agents named as Third Party Defendants herein to process these matters, including regarding Operation Phoenix, has allowed obvious crime or other wrongdoing to be further perpetrated; wrongdoing which damaged and is damaging Lighter, financially and other ways in sums to be show at trial.

**COUNT III**

19. Third Party Plaintiffs refer to the allegations contained in Paragraphs 13 through 18, inclusive, and incorporate same as though set forth herein.

20. Hawaii Grand Juries are supposed duly impaneled federal grand juries sitting at Honolulu, Hawaii, and their failure to act upon *mens rea* redundantly reported, evidenced, and confessed to felonies submitted on behalf of or by Lighter and Galaski is in violation of the their oath and

the charge made by the Court therein, and threatens the revenue base of the United States of America.

Lighter was damaged by their failure to honor the felony confessions of Lighter, Salter and Galaski related to the PBS Ruling. The rejected felony confessions should have indicted either Lighter, Salter and Galaski, or the Plaintiffs in this case and their cohorts, together with other parties who forced enactment of the PBS Ruling in order to coverup committed felonies. The Hawaii Grand Juries were supposed to review these matters, but have either refused Lighter's felony confession or have been tampered with, even in the face of the two opposing tax returns (three sets, no less), see March 24, 1994 letter from Leslie Osborne, Jr., annexed hereto by attachment as **Exhibit "B"** hereto.

Lighter contends that the Plaintiffs herein committed felonies that Lighter was damaged. At least one set of opponents, Lighter or Plaintiffs herein and cohorts, are alleged wrongdoers. Lighter therefore alleges that failure to audit, assess, collect, indict, and convict, or any of these, has caused Lighter to be damaged by Plaintiffs herein. The Hawaii Grand Juries' failure and refusal to process these matters, including regarding Operation Phoenix, has allowed obvious crime to be further purpetrated; obvious crime or other wrongdoing to be further perpetrated; wrongdoing which damaged and is damaging Lighter, financially and other ways in sums to be show at trial.

21. The S.F. Grand Jury is a supposed duly impaneled federal grand jury sitting at San Francisco, California, and their failure to act upon *mens rea* redundantly reported, evidenced, and confessed to felonies

submitted on behalf of or by Lighter and Galaski is in violation of the their oath and the charge made by the Court therein, and threatens the revenue base of the United States of America. Lighter was damaged by their failure to honor the felony confessions of Lighter, Salter and Galaski related to the PBS Ruling. The rejected felony confessions should have indicted either Lighter, Salter and Galaski, or the Plaintiffs in this case and their cohorts, together with other parties who forced enactment of the PBS Ruling in order to coverup committed felonies. The S.F. Grand Jury failed to act since at least December 28, 1993 when the bond secured by abovesaid property at 2299 Roundtop Drive was received to cover the costs of scrutiny, reinforced by said civil action commenced January 3, 1994 in Nevada U.S.D.C., CV-S-94-00009-PMP. Plaintiffs have an alleged mortgage on that property, but they refuse to enforce same because apparently that would upset their cohort Hideo Kobayashi, and review alleged secret arrangements with same; arrangements that would likely well demonstrate much of the allegations made here, i.e. why won't Plaintiffs and Hideo Kobayashi sue each other, with an alleged more than $1.1 due and demanded but not sued for from one to the other, but instead sue and therefore damage the whistleblower/auditor? The so far refused audit of HPW, Inc., for example, would assist either prove Lighter wrong or lessening this damage to Lighter. The audit may reveal one or more officers and agents of the United States giving Plaintiffs and cohorts herein unfair preference in applying the Internal Revenue Code, which would be further damage to Lighter revealed merely by the so far refused audit.

Again, Lighter contends that the Plaintiffs herein committed felonies that Lighter was damaged. At least one set of opponents, Lighter or Plaintiffs herein and cohorts, are alleged wrongdoers. Lighter therefore alleges that failure to audit, assess, collect, indict, and convict, or any of these, has caused Lighter to be damaged by Plaintiffs herein. The S.F. Grand Jury's failure and refusal to process these matters, including regarding Operation Phoenix, has allowed obvious crime to be further perpetrated; wrongdoing which damaged and is damaging Lighter, financially and other ways in sums to be show at trial.

22. Regarding the grand jury members of the Main Third Party Defendants group, said grand juries are named in its capacity as an independent entity separate from the federal government, and therefore constituted apart from any element of the three branches of the general government, i.e. Judicial, Legislative, or Executive. United States v. Chanen, 549 F.2d 1306 (9th Cir. 1977). Lighter has suffered financial loss due to the obvious crime.

COUNT IV

23. Third Party Plaintiffs refer to the allegations contained in Paragraphs 19 through 22, inclusive, and incorporate same as though set forth herein.

24. All Main Third Party Defendants have engaged in coverup of Operation Phoenix, which is apparently the largest joint Treasury and Justice Departments covert project aimed at arbitrarily prejudicing citizens with the secret label "Tax Protester"; whereupon any conviction generally results in the enforcement of the secret mandate to give "stiff sentences

as a deterrent". Express, redundant notice of and an abundance of evidence regarding the Operation Phoenix scheme to violate U.S. Constitutional rights of Lighter, Salter and Galaski--and other citizens, as well--was given to all Main Third Party Defendants, the Plaintiffs herein, and the Court. Operation Phoenix enforces the prevention of citizens, including Lighter, from being impanelled onto a federal grand jury for any case involving taxes, thus depriving Lighter of his full federally protected rights as recognized by the U.S. Constitution, statutes, regulations, rules, and common sense.

Operation Pheonix is apparently supported by Internal Revenue Service form 6941, which is a dossier on every person known to be in the United States of America, which file notes any secret label "Tax Protester" in order to report to certain Courts for use in Operation Phoenix. Said form 6941 supports violation of said full federally protected rights, damages Lighter, and must be prevented from further prejudicing the **AUDIT**, **ASSESSMENT** and **COLLECTION** of taxes due, such as the apparently large sum now due from Plaintiffs and cohorts; which is demonstrated by the tax return filed by Lighter that is now filed together with a felony confession as of now still rejected. Lighter can call various expert witnesses or their testimony from around the country. For example, this includes the credible former government investigator Rodney Stitch, author of Defrauding America and Unfriendly Skys who met with corruption and coverup of corruption at the S.F. Grand Jury under supervision of the Honorable Vaugh Walker, the judge in abovesaid CR.

93-0592VRW. The law must be upheld, finally.[4]

**DEMAND FOR RELIEF**

25. Lighter hereby makes demand for adjudication of this Third Party Complaint, as enumerated in the prayer for relief herebelow, under the judicial power of the United States as provided for by Article III of the original organic Constitution of the United States of America, and additionally "The safeguards accorded to Article III judges were designed to protect litigants with unpopular or minority causes or litigants who belong to a despised or suspect class." Pacemaker Diagnostic Clinic of America v. Instomedix, 725 F.2d 537,541 (9th Cir. 1984), voluminous citations supporting this decision omitted. Lighter'svoluntary felony confessions made to the Honorable Harold M. Fong in open court, pursuant to redundant written related confessions, were not received by Judge Fong. Thus, it is possible to conclude that felony confessions may be only arbitrarily accepted in Hawaii Federal Court, contrary to required admissibility pursuant 18 U.S.C. § 3501.

WHEREFORE, Defendants pray:

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4 See also, 26 U.S.C. § 7873(b), et seq.; Nesmith v. US, 80-1 USTC 9216; Hallstrom v. Tillamook County, (1989) 493 U.S. 20, 107 L.Ed.2d 237, 110 S.Ct. 304; United States v. Ron Pair Enterprises, (1989), 489 U.S. 235, 103 L.Ed.2d 290, 109 S.Ct. 1026; Landreth Timber Co. v. Landreth, (1985) 471 U.S. 681, 685, 85 L.Ed.2d 692, 105 S.Ct. 2297; Griffin v. Oceanic Contractors, Inc. (1982) 458 U.S. 564, 73 L.Ed.2d 973, 102 S.Ct. 3245; American Tobacco Co. v. Patterson, (1982) 456 U.S. 63, 71 L.Ed.2d 748, 102 S.Ct. 1534; Ford Motor Co. v. Cenance, (1981) 452 U.S. 155, 68 L.Ed.2d 744, 101 S.Ct. 2239; Consumer Product Safety Comm'n v. GTE Sylvania Inc., (1980) 447 U.S. 102, 64 L.Ed.2d 766, 100 S.Ct. 2051; Reiter v. Sonotone Corporation, et al. (1979) 442 U.S. 330, 60 L.Ed.2d 931 S.Ct. 2326; Mathews v. Lucas, (1976) 427 U.S. 495, 49 L.Ed.2d, 96 S.Ct. 2755; Espinoza v. Farah Mfg. Co., (1973) 414 U.S. 86, 38 L.Ed.2d 287, 94 S.Ct. 334; Federal Maritime Com. v. Seatrain Lines, Inc., (1973) 411 U.S. 726, 36 L.Ed.2d 620, 93 S.Ct. 1773; Richards v. United States, (1962) 369 U.S. 1,9, 7 L.Ed.2d 492, 82 S.Ct. 585; United States v. American Trucking Assns. Inc., (1940) 310 U.S. 534, 543, 84 L.Ed. 1345, 60 S.Ct. 1059; Franks v. Bowman Construction Co., (1976) 424 U.S. 747 at 761, 47 L.Ed.2d 444, 96 S.Ct. 1251.

A. That a Writ of Mandamus be issued out of this Court commanding Main Third Party Defendants other than Hawaii Grand Juries and S.F. Grand Juries to **AUDIT, ASSESS** and **COLLECT** for taxes related to HPW, Inc., plus Royal and B&P as appropriate, by performance of duties (1) to determine which of the filed tax returns is/are correct, and upon finding that the false tax return is likely criminally false, (2) present to the Federal Grand Juries for possible indictment either Lighter or the Plaintiffs herein and their cohorts; and (3) if Lighter be the incorrect tax return filer, then Lighter be turned over to said Federal Grand Juries, then Lighter be turned over together with his felony confession of guilt to significant tax fraud;

B. That a Writ of Mandamus be issued out of this Court commanding the Hawaii Grand Juries and/or the S.F. Grand Juries now reviewing the matters herein, pursuant to their failure to act upon the proper reporting of Lighter, Salter and/or Galaski to same, to reconsider the violation of law committed by the Main Third Party Defendants, other than the Federal Grand Juries, in promoting the clandestine Operation Phoenix, and otherwise be a threat to the revenue base of the United States of America by wrongfully enforcing the PBS Ruling through their failure and refusal to act on the matters herein;

C. That the officers and agents of the United States, the Main Third Party Defendants, other than the Hawaii Grand Jury and S.F. Grand Jury, be found personally, individually and professionally liable for damages to Lighter, including for obstruction of justice, in a sum to be shown at trial;



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D. Declaratory judgement that the conduct of certain officers and agents of the United States of America named herein have damaged Lighter in an amount to be shown at trial.

E. That Salter and Galaski be required to stipulate to the conduct of certain treasury personnel named herein, based on personal knowledge, are a threat to the revenue base of the United States, and wrongfully force Lighter, Salter and Galaski to have promoted the PBS Ruling.

E. That Lighter be awarded costs of suit and reasonable attorneys' fees; and

F. For such other and further relief as the Court deems just and equitable in the premises.

**VERIFICATION**

I, Eric Aaron Lighter, do hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief, as I believe same to be true and correct, as God is my witness. Executed under Section 1746(1) of Title 28 United States Code at Honolulu, Hawaii this 18th day of June, 1994.

/S/

ERIC AARON LIGHTER, individually, and dba, and
WELLS FARGO PROTECTIVE ALARM SERVICES
*Sui Juris* and *In Propria Persona*

[SEAL]

U.S.Department of Justice
United States Attorney
District of Hawaii

300 Ala Moana Blvd., Box 50183
Honolulu, Hawaii 96850 [phone numbers]

March 24, 1994

ERIC A. LIGHTER
P.O. Box 2556
Honolulu, Hawaii 96804

Dear Mr. Lighter:

Please be advised that the various materials that you have sent to this Office and the Chambers of Chief United States District Court Judge ALAN KAY have been delivered to the foreperson of a Sitting Grand Jury here in the District of Hawaii. I am sure that if the Grand Jury wishes any additional input, they will contact you.

Very truly yours,

ELLIOT ENOKI
United States Attorney

By_____/S/_____
LESLIE E. OSBORNE
Assistant U.S. Attorney

cc: HONORABLE ALAN C. KAY
Chief U.S. District Court Judge

[*Third-Party Complaint EXHIBIT "1"*]

[Envelope exhibit omitted for reprinting]

AFFIDAVIT

*[Filed in California: J519 PAGE 1996, et seq.]*

STATE OF CALIFORNIA )
) SS.
COUNTY OF SANTA CLARA )

I, the undersigned, do hereby depose, state, and declare:

1. That this affidavit is served to inform the public at large of the dilemma which has been perpetrated upon the Courts (Judges) of the State of California by the Franchise Tax Board, the Internal Revenue Service, the California State Department of Justice-John Vandekamp, State Attorney General, and the U.S. Department of Justice. These agencies have worked hand-in-hand in a conspiracy to overthrow the FORM OF GOVERNMENT established, by We The People, under Article IV (U.S. Const.) and the Bill of Rights, Amendments 1 through 10. This includes the California Constitution, specifically Article 1 Section 1, Section 7 (DUE PROCESS), and Section 13 (right to privacy).

2. The documents which are attached to this affidavit establish that the Franchise Tax Board, and the Internal Revenue Service have a plan to own, operate, and control EVERY Court in the State of California which includes the Federal District Courts in the State of California.

3. These attached exhibits labeled as A, B, and C describe or explain the following:

a. That the document labeled as A shows how the Internal Revenue Service has influenced the Federal District Court Judges to punish, by

prison sentences, those citizens who oppose any determination by the Internal Revenue Service as the I.R.S. sees fit. It can be established that the Internal Revenue Service has a Plan to prohibit a fair trial.

b. That the document labeled as B indicates or explains how the U.S. Department of Justice and the Internal Revenue Service CONSPIRE to "rig a jury".

c. That the document labeled as C indicates or explains how the Internal Revenue Service tinkers or tampers with Grand Juries to do the "will" of the agency. All of these summarized techniques, as used by the agencies listed in paragraph numbered "2" are crimes against every citizen in this country which are in themselves FELONIES.

4. Upon inspection of a Public Records Act Request, dated September 25, 1985; it is quite clear, from the description of the documents and papers explained in paragraphs 3a, b, and c that the documents sought by the request is the Franchise Tax Board EXEMPT from the plan of practices which are in themselves felonies. In examining the reply to my request, dated October 10, 1985; the Franchise Tax Board REFUSED to answer my request for documents exempting them from committing crimes of which are in themselves felonies. In examining the reply letter, to my appeal for documents, dated October 28, 1985 and from the California State Personnel Board; Manager Justin Keay would not get involved with my appeal for justice.

5. That I have made the same request for documents from the State

Department of Justice. The reply to my request was a flaw in the request itself was used as an excuse for no answer at all! Upon knowledge of this flaw in my request, I drafted a new request for information and sent it to Attorney General John Vandekamp. As of to date he has not responded to my corrected request for documents exempting his office from committing felonies. Those documents just mentioned are attached to this affidavit as exhibits.

6. The same request was made to the District Attorney in the County of Santa Clara of which he plainly refused to answer to the request by stating some other matter, in his reply to the request, that is NOT RELEVANT to the request. Those documents just mentioned are attached to this affidavit as exhibits.

7. That the U.S. Department of Justice has hesitated in answering the request for documents by tactics of stall and delay outside the scope of the LAW-the Freedom of Information Act. As a statement of fact I, the undersigned, have been labeled, without a hearing, as a "taxprotester" which has denied me a part of my liberty to sit as a juror in a judicial tax proceeding.

This affidavit is made in an attempt to expose these official wrong-doings and may God have mercy on us who seek the TRUTH.

Respectfully submitted,
/S/
GREGORY GALASKI, AFFIANT

[Jurat]

[SEAL]

**MEMORANDUM**

[*Filestamped: RECEIVED* FEB 26, 1973 *Intelligence Division, Los Angeles,Calif.*]

To: Participants in Conference on Tax Rebellion Movement
From: Regional Commissioner, Western Region
Subject: Tax Rebellion Movement in California

I am sending you the minutes of our meeting of February 9, 1973, on the Tax Rebellion Movement. These minutes enumerate action items for the Los Angeles and San Francisco District Directors and for Regional Office Officials.

I appreciate your past attention to this serious matter and feel confident that all of us working together can successfully overcome this challenge to our tax system.

/S/

Homer O. Croasmun
Regional Commissioner

Attachment

Internal Revenue Service

Minutes of February 9, 1973 Conference on

Tax Rebellion Movement in California

Participants

Mr. Croasmun, Regional Commissioner
Mr. Schwartz, Regional Commissioner
Mr. Rowe, Regional Inspector
Mr. Kingman, District Director, San Francisco
Mr. Schmidt, District Director, Los Angeles
Mr. McCart, Acting Assistant Regional Commissioner, Intelligence
Mr. Hansen, Chief, Los Angeles
Mr. Howard, Chief, San Francisco
Mr. Monzon, Chief, Enforcement, Regional Office, BATF
Mr. Vargofcak, Assistant Special Agent-in-Charge, San Francisco
Mr. Dvorak, Assistant Regional Inspector
Mr. Pollock, Regional Protective Programs Manager
Mr. Busalacchi, Regional Public Affairs Officer
Mr. Krause, Regional Coordinator, Tax Rebellion Movement

Mr. Croasmun opened the conference with a review of the history of the Tax Rebellion Movement. He stated we should set up our metes and bounds to achieve our goals; that we do not have unlimited manpower so we must focus on the total program and concentrate on the leaders of the movement attacking IRS.

Mr. Croasmun pointed out that seven months ago we changed our direction on Tax Rebellion cases from a defensive posture and have now seized the initiative by infiltration of their organization so we now know in advance of their plans before they execute them. This is vital and we must continue to stay aggressive if we are to enforce the revenue laws and to protect the Service from attack by tax rebel militants.

Mr. Croasman stated that we are not limiting ourselves to the sanction in the Revenue Code, but are using all the available law

enforcement machinery whether it be federal, state or local laws [*emphasis added*]; for example, if a tax rebel leader is violating a state law by carrying a concealed weapon, we should use state enforcement to prosecute him; and, if there is a firearms violation, ATF agents should be alerted. Mr. Howard advised that he had been advised by the Detroit District that since [redacted] spoke on the radio in Cleveland, there had been a flood of General Motors employees submitting false forms W-4. Mr. Busalacchi stated he had a report that [redacted] had been active in Albuquerque.

Mr. Hansen advised that a [redacted] of Venture County had attempted to file false forms W-4; that he is now leading the Mariposa camp of militants organized by [*redacted*] he [*redacted*]. Mr. Vargofcak said the sheriff of Mariposa County had been checkinq on the activities of [*redacted*] since May 1972, when the [*redacted*] bought the Maripose property from [*redacted*]; that [*redacted*] is a close personal friend of [*redacted*] that [*redacted*] has a state criminal record; that he has three or four firearms; and that the Bureau of Alcohol, Tobacco & Firearms has a case on [*redacted*].

Mr. Schmidt pointed out that there are varying degrees of militancy in the various tax rebellion groups; that in the Los Angeles District, Taxpayers Anonymous in Orange County, led by [*redacted*] and [*redacted*] is the most militant; and that we should keep this in mind in deciding our targets.

Mr. Monzon gave a summary of laws enforced by the Bureau of Alcohol, Tobacco & Firearms which could be used on tax rebel cases. He pointed out it is not a federal violation to carry a gun unless the person has

a felony record; that an automatic pistol is not an "automatic" gun under the definitions of BATF unless one pull of the trigger will discharge multiple shots; that explosives are a federal violation; and, likewise, "silencers" are a violation. He said he wanted more information about a report that tax rebels are able to buy silencers in Phoenix, as this would be a clear violation.

Mr. Howard advised he has been conferring with the state tax officials who are anxious to cooperate with IRS in the attack on tax rebels who also do not pay state taxes; often the state can move quickly to close up a tax rebel's business or revoke his license; that we should see that the state uses its enforcement machinery on those cases which are not our targets.

Mr. Croasmun reported on his discussions with Assistant U.S. Attorney Couriz and Judge Crocker, Fresno, and of their interests in enforcement of the law in tax rebel cases. Mr. Hansen commented on the problem of federal judges appearing to be anti-IRS based on the belief that the IRS is "highhanded." Mr. Howard reported a change of attitude in federal judges in San Francisco after he met with a number of them and discussed the gravity of the Tax Rebellion Movement and the importance of giving prison sentences as deterrents [*emphasis added*].

There was a general discussion of the importance of meeting with U.S. Attorneys and federal judges to acquaint them with the full picture of the tax rebellion movement. Mr. Croasmun pointed out that after his meeting with Mr. Couris and Judge Crocker, they requested background information on the Movement which was furnished them.

Mr. Kingman suggested the possibility of requesting religious leaders

to warn their following against participation in the movement [*emphasis added*], pointing to the beneficial effects of Mormon Church President Lee's message.

Mr. Howard advised that after his discussion with the federal judges they said they had not full background information on some of the defendants to whom they had given light sentences. Mr. Schwartz suggested that the Porth-type cases not prosecuted should at least be considered for fraud penalties or other civil penalties.

Mr. Schwartz also advised the district directors that they should instruct employers who receive false W-4 or W-4E which they know to be false through admission of employee or knowledge of previous employment that the employer should disregard the false exemption certificate and withhold on the basis of zero exemptions or on the basis of a former correct form W-4.

There was a general discussion on the problem of detecting false W-4 or W-4E cases where the taxpayer does not so advise the government or the employer does not do so; and, particularly so where the taxpayer completes his action by not filing any form of 1040 at year end, but becomes an "IRS dropout." With the present limited matching at the Service Centers of the filing index with prior years' returns, or employers' copies of W-2's with filing indexes, such cases will probably never be detected. Suggestions were made that we use all available means to reach employers to advise them of their responsibility to advise IRS when they receive a suspected false form W-4 or W-4E. Also, we should use our liaison contacts with the Tax Executive Institute to get the message to them



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of their responsibility in such cases and of advising employer-clients. Also, we should use trade journals to reach employers with this message. Also, we should use Circular E for this purpose.

Mr. Krause pointed out the importance of close planning on common targets by the tax rebellion project supervisors of the Los Angeles and San Francisco districts with planning meetings as needed.

Action Items for District Directors:

1. Maintain the initiative in the attack on tax rebels.
2. Know their plans before they arrive at our door to execute them.
3. Identify the leaders of the Movement and concentrate on them.
4. Have a plan of action in coordination with the Region rather than hit and miss defensive reactions.
5. Continue and step up the infiltration in-depth of the Movement.
6. Use all available federal, state and local laws.
7. Use civil penalties on Porth-type cases.
8. Wage a campaign to educate U.S. Attorneys and federal judges with the importance of prison sentences on cases [*emphasis added*].
9. District Directors to continue to follow up cases of admitted or known false W-4's or W-4E's to advise employers of responsibilities in such cases and follow up to see that proper 1040's are filed at the filing season.
10. Use State taxing agencies willing to cooperate on enforcement of laws on tax rebels.
11. Los Angeles and San Francisco project supervisors to hold periodic planning meetings on common targets.

Action Items for Region:

1. Use Tax Executive Institute liaison to inform tax consultants and their client-employers of their duties on suspected false exemption cases.

2. Consider requesting legislation or an IRS published ruling to require employers to file with service centers a copy of amended W-4 or W-4E forms.

3. Use Circular E, the Employer's Tax Guide on Withholding, to inform employers of responsibilities on suspected false exemption cases.

4. Use trade journals to reach employers for same purpose.



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# OPERATION PHOENIX DATA SHEET I

This data sheet must be completed on each individual identified during the initial phases ot Operation Phoenix. The information should be available from the compliance packages completed by each service center. The information is needed to update the database maintained by CIB at the Fresno service center. The data sheet should be completed ater the initial CI review of the compliance package and before the package is referred to the appropnate compliance unit. Return the completed forms to: Chief, Cnminal Investigation Branch, Special Projects Unit - Stop 83, P.O. B0x 12947, Fresno, CA 93779 not later than January 31, t993.

<table>
<tr><td colspan="3">Name (Last, First, MI)</td><td colspan="3">SSN</td></tr>
<tr><td colspan="6">Address</td></tr>
<tr><td colspan="4">City</td><td>State</td><td>Zip</td></tr>
<tr><td>DO Code</td><td>SC Code</td><td colspan="2">PDT Indicator on MF<br>O yes O no</td><td colspan="2">Open CI Case?<br>O yes O no</td></tr>
<tr><td colspan="2">Valid Returns Posted?<br>O yes O no</td><td>8812</td><td>8912</td><td>9012</td><td>9112</td></tr>
<tr><td colspan="3">Account in TDA status?<br>O yes O no</td><td colspan="3">Account in TDI status?<br>O yes O no</td></tr>
<tr><td colspan="3">Open AIMS?<br>O yes O no</td><td colspan="3">Frivolous 1040NR/Xs filed?<br>O yes O no</td></tr>
</table>

Compliance Package being referred to. (X one or fill in the blank.).

O CI

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or_____

SC 93-656-/ (O/T 1-93) Department of the Treasury-Internal Revenue Service

[SUMMONS and CERTIFICATE OF SERVICE omitted in reprinting]

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[FILED: *AUG 4, 1994*]

[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**ANSWER OF THIRD-PARTY DEFENDANT GREGORY J. GALASKI TO THIRD-PARTY COMPLAINT OF ERIC AARON LIGHTER AND THIRD-PARTY DEFENDANT'S CROSSCLAIM AGAINST THIRD-PARTY DEFENDANTS INCLUDING THE FOLLOWING PERSONALLY AND PROFESSIONALLY: ODILE HANSON, JURY ADMINISTRATOR, UNITED STATES DISTRICT COURT AT SAN FRANCISCO, CALIFORNIA; RICHARD WIEKING, CLERK, UNITED STATES DISTRICT COURT AT SAN FRANCISCO, CALIFORNIA; U.S. DEPARTMENT OF JUSTICE; RAFAEL W. GARCIA, REGIONAL INSPECTOR GENERAL, TREASURY DEPARTMENT; JOHN C. STOCKER, DEPUTY COMMISSIONER INTERNAL REVENUE SERVICE; KENNETH DAVIDSON, WESTERN REGIONAL MANAGER, INSPECTION, TREASURY DEPARTMENT, WALNUT CREEK, CALIFORNIA; MARGARET RICHARDSON, COMMISSIONER, INTERNAL REVENUE SERVICE; LLOYD BENSON, SECRETARY OF U.S. TREASURY & EXHIBITS;**

**CERTIFICATE OF SERVICE**

COMES NOW Third-Party Defendant and Crossclaimant, Gregory J. Galaski ("Galaski"), the entire record in the case considered and incorporated herein by reference thereto as though set forth in full and declaratory Order entered and served April 14, 1994 and considered in civil action No. CV-94-0009-PMP (U.S.D.C. Nevada, *Galaski v. San Francisco, California, Federal Grand Jury et al* .) does hereby first answer third-party plaintiff's complaint, and then crossclaims against referred to and other named third-party defendants.

In support hereof, Galaski respectfully shows unto the Court:

**ANSWER**

1. Paragraphs numbered I through 6 of the Third-Party Complaint are admitted.

2. Paragraphs numbered 7, and 8, of the Third-Party Complaint is denied as Galaski has no personal knowledge as to the named certain Treasury and Justice department employees.

3. Paragraph numbered 9 of the Third-Party Complaint does not require an affirmative response.

4. Paragraph numbered 10 of the Third-Party Complaint is admitted by Galaski only in so far as any reference to the Federal Register is made, and the facts expressed or implied connected therewith.

5. Paragraph numbered 11 of the Third-Party Complaint is denied given that Galaski does and will not know what co-defendant Salter will or will not testify to.

6. Paragraph numbered 12 of the Third-Party Complaint is admitted. Galaski is more than interested in stipulating or testifying to the obstruction of justice he has had to endure which includes crimes committed by named and included third-party defendants under Section 1509 of Title 18 United States Code - intentional obstruction of the attached declaratory Order entered and served April 14, 1994 (Exhibit TC-1) in the United States District Court, District of Nevada, within the case of *Galaski v. San Francisco, California, Federal Grand Jury et al.*, No. CV-94-0009-PMP with the exception of John Salter. This same intentional obstruction jeopardizes the revenue base of the United States of America.

7. Paragraph numbered 13 of the Third-Party complaint does not require an affirmative answer.

8. Paragraph numbered 14 of the Third-Party complaint is admitted given the intentional obstruction of a Court Order entered in Galaski's favor by the executive branch of the federal government.

9. Paragraph numbered 15 of the Third-Party complaint is admitted given Galaski's personal knowledge of the paradox arising from the "PBS" Internal Revenue Service ruling, and his personal experience as a taxpayer advocate and advocacy of the tax laws which include agency procedure provided in Treasury regulations, and IRS manuals and publications. It is well known to Galaski, and that Galaski can demonstrate that Treasury personnel intentionally violate their own binding laws and procedures.

10. Paragraph numbered 16 of the Third-Party complaint is only admitted in so far as Galaski having information pertaining to and promotion of the "PBS" Internal Revenue Service ruling.

11. Paragraphs numbered 17, 18 of the Third-Party complaint is admitted by Galaski.

12. Paragraph numbered 19 of the Third-Party complaint does not require an affirmative answer.

13. Paragraph numbered 20 of the Third-Party complaint is admitted by Galaski. Named and included named Third-Party defendants,

except for Salter, continue to threaten the federally protected Constitutional rights of Galaski, and have committed a crime of obstruction of a court Order (see attached Exhibit TC-1) under Section 1509 of Title 18 United States Code.

14. Paragraph numbered 21 of the Third-Party complaint is admitted by Galaski. Named and included Third-Party defendants, except for Salter, continue to threaten the federally protected Constitutional rights of Galaski, and have committed a crime of obstruction of a court Order (see attached Exhibit TC-1) under Section 1509 of Title 18 United States Code.

15. Paragraph numbered 22 of the Third-Party complaint is admitted by Galaski and adds that "The moment the executive is allowed to control the action of the courts in the administration of criminal justice, their independence is gone." *In Re Miller*, 17 Fed. Cas. p. 295, No. 9,552. The Court also includes the federal grand jury acting in its quasi-judicial capacity according to Order entered and served February 22, 1994, *Galaski v. San Francisco, California, Grand Jury, et al.*, U.S.D.C. Nevada No. CV-S-94-009-PMP (Exhibit "TC-2").

Also the grand jury is a pre-constitutional institution, see *United States v. Calandra*, 414 U.S. 338, 342-43 (1974), given the constitutional stature by the Fifth Amendment but not relegated by the Constitution to a position within any of the three branches of the government. "The federal

grand jury is a constitutional fixture of its own right..." *Nixon v. Sirica*, 159 U.S. App. D.C. 58, 487 F.2d 700, 712 n.54 (1973) 359 U.S. 41, 49 (1959).

Respecting the work of the grand jury, both the court and prosecutor play supportive and complementary roles. As a practical matter the grand jury generally relies on the prosecutor to determine what witnesses to call. In addition the prosecutor conducts the examination of the witnesses and otherwise determines what evidence to present before the grand jury, and it is the prosecutor whom prepares the indictment which the grand jury is required to review and adopt as their own; however, neither the court or the prosecutor have the authority or power to impede and impair this defendant from making his submissions to appear before the federal grand jury, and to receive a response from same concerning his request.

Section 1504 of Title 18 United States Code unequivocally provides, in pertinent part, that "Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury." (emphasis added).

Given the language of the statute, Galaski was and still is entitled an unobstructed appearance before the same federal grand jury whether it be in San Francisco, California, or Honolulu, Hawaii or "elsewhere" (see attached Exhibit TC-1). Also see *Hallstrom v. Fillamook County*, (1989) 493 U.S. 20; *United States v. Ron Pair Enterprises*, (1989); 489 U.S. 235; *Landreth Timber Co. v. Landreth*, (1985) 471 U.S. 681, 685; *Griffin v.*

*Oceanic Contractors, Inc.*, (1982) 458 U.S. 564; *American Tobacco Co. v. Patterson*, (1982) 456 U.S. 63; *Ford Motor Credit Co. v. Cenance* (1981) 452 U.S. 155; *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, (1980) 447 U.S. 102; *Reiter v. Sonoton Corporation et al.*, (1979) 442 U.S. 330; *Mathews v. Lucas*, (1976) 427 U.S. 495; *Espinoza v. Farah Mfg. Co.*, (1973) 414 U.5. 86, 38; *Federal Maritime Com. v. Seatrain Lines, Inc.*, (1973) 411 U.S. 726; *Richards v. United States*, (1962) 369 U.S. 1, 9; *United States v. American Trucking Assans., Inc.*, (1940) 310 U.S. 534, 543; *Alaska S.S. Co. v. Urited States*, (1933) 290 U.S. 256; *Gould v. Gould*, (1917) 245 U.S. 151, 100 153; *Caminetti v. United States*, (1917) 242 U.5. 470; *Benziger v. United States*, (1904) 192 U.S. 38; *Hamiton v. Rathbone*, (1899) 175 U.S. 414, 421.

Going behind the plain pertinent language of the statute, i.e. 14 ! 18 U.S.C. 1504, in search of a possibly contrary congressional intent is a step to be taken cautiously even under the best of circumstances. *American Tobacco Co. v. Patterson*, supra, 456 U.S. at 75; *Piper v. Chris-Craft Industries, Inc.*, (1977) 430 U.S. 1, 26, 51 L.Ed.2d 124, 97 S.Ct. 926. "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *Griffin v. Oceanic Contractors, Inc.*, supra, 58 U.S. at 571 [3]; *United States v. American Trucking Assns.*, Inc., supra, 310 U.S. 534, 543.

The task of resolving the dispute over the meaning of the statute begins where all such inquiries must begin: with the language of the statute itself. *Hallstrom v. Tillamook County*, supra, 493 U.S. at 25; *United States v. Ron Pair Enterprises*, supra, 489 U.S. at 241; *Landreth Timber Co. v. Landreth*, supra, 471 U.S. at 685; *Reiter v. Sonotone Corp.*, supra, 442 U.S. at 337.

In this case it is also where the inquiry should end, for where, as here, the subject statute's language is plain, "the sole function of the courts is to enforce it according to its terms." absent a clearly expressed legislative intention to the contrary. *Caminetti v. United States*, supra, 242 U.S. at 485; *United States v. Ron Pair Enterprises*, supra, 489 U.S. at 241; *Ford Motor Credit Co. v. Cenance*, supra, 452 U.S. at 157-158 & n. 3; *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, supra, 447 U.S. at 108.

It is a fundamental principle of American Jurisprudence that where a statute is clear and explicit in its language and its meaning is not doubtful, a contrary interpretation of the statute will not be condoned by the Courts. *Hallstrom v. Tillamook County*, supra; *United States v. Ron Pair Enterprises*, supra; *Griffin v. Oceanic Contractors, Inc.*, supra; *Landreth Timber Co. v. Landreth*, supra; *American Tobacco Co. v. Patterson*, supra; *Ford Motor Credit Co. v. Cenance*, supra; *Consumer Product Safety Comm'n v. GTE Sylvania Inc.*, supra; *Reiter v. Sonotone*

*Corporation et al.*, supra; *Mathews v. Lucas*, supra; *Espinoza v. Farah Mfg. Co.*, supra; *Federal Maritime Com. v. Seatrain Lines, Inc.*, supra; *Richards v. United States*, supra; *United States v. American Trucking Assns., Inc.*, supra; *Alaska S.S.Co. v. United States*, supra; *Caminetti v. United States*, supra; *Hamilton v. Rathbone*, supra.

16. Paragraph numbered 23 of the Third-Party complaint does not require an affirmative answer.

17. Paragraph numbered 24 of the Third-Party complaint is admitted, and Galaski submits attached as Exhibits "TC-3" and "TC-4" the evasive and unprofessional responses from named and included third-party defendants - Michael E. Shaheen, Counsel, U.S. Department of Justice, Office of Professional Responsibility, and Rafael W. Garcia, Regional Inspector General, Treasury department as evidence of their conduct threatening the revenue base of the United States of America in order to cover-up for crimes committed by themselves as well as for others.

**CROSSCLAIM**

CONES NOW CROSSCLAIMANT GREGORY J. GALASKI, in propria persona and sui juris, based on his reliance upon declaratory Order entered and served April 14, 1994 received from the United States District Court, District of Nevada at Las Vegas Nevada, in the case of *Galaski v. San Francisco, California Federal Grand Jury et. al.*, No.

CV-94-0009-PMP, alleges and complains as follows. Galaski incorporates, by reference herein the attached true and correct copy of Verified Amended Complaint for Relief from Damages, Memorandum of Points & Authorities In Support of Verified Amended Complaint For Relief From Damages with Exhibit #1-AC, and Declaration of Gregory J. Galaski In Support of Verified Amended Complaint for Relief From Damages as though set forth in full herein attached hereto as Exhibit TC-5. Galaski also includes, attached as Exhibit TC-6, his First Supplemental Declaration supporting his certified amended complaint regarding loss to business and reputation involving premeditated unconstitutional conduct.

**JURISDICTION AND VENUE**

1. Galaski joins in with Third-Party plaintiff Eric Aaron Lighter et al., under Sections 1509 and 3501 of Title 18 United States Code, intentional obstruction of a declaratory Order by defendants, except for John Salter, Sections 1331, 1357 and 1651 of Title 28 United States Code, Article III, Section 2, and the Fourth and Fifth Articles to the original organic Constitution for the United States of America. Galaski also joins in the action with Third-Party plaintiff Eric Aaron Lighter et al., under the theory of *res judicata* concerning the attached declaratory Order entered and served April 14, 1994 in the United States District Court, District of Nevada, at Las Vegas, Nevada (Exhibit TC-1) which found that Galaski had made a proper reporting concerning prosecutorial misconduct which

is connected with this case as to the two sets of tax returns under the paradoxical "PBS" Internal Revenue Service ruling.

Galaski's federal claim or issue has been adjudicated, and the Court therein found putatively illegal conduct by the executive and judicial branches of the federal government *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). This Court has more than enough jurisdiction in personam as well as in subject matter given Galaski's compelled which is without exception. *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943).

This Court has venue under the applicable provision of Section 1391 of Title 28 United States Code, or under Article III of the original organic Constitution for the United States of America.

**PARTIES**

2. Crossclaimant Galaski is an adult American Citizen of Nevada state whom can be through the address of 4721 Cinderella Ln., W., Las Vegas, Nevada [89102]. Galaski is an independent advocate of the tax laws of the United States, and at all times has specialized in investigation, case preparation and litigation concerning and in defense of the tax laws of the United States.

3. Third-Party defendants have been generally identified by third-party plaintiff Eric Aaron Lighter which is incorporated herein by reference thereto as though set forth in full herein.

4. Odile Hanson ("Hanson"), who was at all relevant times herein an individual residing in California state, is named personally and professionally, of which party is employed by the United States of America, in the United States Court, as the court's Jury Administrator. Hanson has knowledge of Galaski's declaratory Order finding Galaski's reporting of prosecutorial misconduct, in *USA v. Marsh*, No. CR 93-0592-VRW, to be proper. Hanson committed significant acts of corruption and cover-up of corruption having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California, also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

5. Richard Weiking ("Weiking"), who was at all relevant times herein an individual residing in California state, is named personally and professionally, of which party is employed by the United States of America, in the United States Court as the court's clerk. Weiking has knowledge of Galaski's declaratory Order finding Galaski's reporting of prosecutorial misconduct, in *USA v. Marsh*, No. CR 93-0592-VRW, to be proper. Weiking committed significant acts of corruption and cover-up of corruption having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California, also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

6. Janet Reno ("Reno"), who was at all relevant times herein an individual residing in Washington, District of Columbia, is named personally and professionally, of which party is employed by the United States of America, in the United States Department of Justice as Attorney General. Reno has knowledge of Galaski's declaratory Order finding Galaski's reporting of Prosecutorial misconduct, in *USA v. Marsh*, No. CR 93-0592-VRW, to be proper. Reno committed significant acts of corruption and cover-up of corruption having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California or "elsewhere", also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

7. Rafael W. Garcia ("Garcia"), who was at all relevant times herein an individual residing in California state, is named personally and professionally, of which party is employed by the United States of America, in the United States Treasury Department, as the Regional Inspector General. Garcia has knowledge of Galaski's declaratory Order finding Galaski's reporting of prosecutorial misconduct, in *USA v. Marsh*, No. CR 93-0592-VRW, to be proper. Garcia committed significant acts of corruption and coverup of corruption having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California or "elsewhere", also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

8. John C. Stocker ("Stocker"), who was at all relevant times herein an individual residing in Washington, District of Columbia, is named personally and professionally, of which party is employed by the United States of America, in the United States Treasury Department, as the Deputy Commissioner of Internal Revenue. Stocker has knowledge of Galaski's declaratory Order finding Galaski's reporting of prosecutorial misconduct, in *USA v. Marsh* No. CR 93-0592-VRW, to be proper. Stocker committed significant acts of corruption and cover-up of corruption having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California or "elsewhere", also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

9. Kenneth Davidson ("Davidson"), who was at all relevant times herein an individual residing in California, is named personally and professionally, of which party is employed by the United States of America, in the United States Treasury Department, as the Western Regional Manager of Inspection. Davidson has knowledge of Galaski's declaratory Order finding Galaski's reporting of prosecutorial misconduct, *USA v. Marsh*, No. CR93-0592-VRW, to be proper. Davidson committed significant acts of corruption and cover-up of corruption having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California or "elsewhere", also in violation of Section 1509 of

Title 18 United States Code - criminal obstruction of a court order. Davidson was advised, on or about December 31, 1993 of Lighter's on-coming bond provided to Galaski to cover the costs of federal grand jury scrutiny concerning Galaski's grand jury reporting to the federal grand jury sitting at San Francisco, California. Mr. Davidson acknowledged Mr. Lighter's telephone announcement and replied "so you think he has received a bum rap", and terminated the telephone conversation with Lighter.

10. Margaret Richardson ("Richardson"), who was at all relevant times herein an individual residing in Washington, District of Columbia, is named personally and professionally, of which party is employed by the United States of America, in the United States Treasury Department, as the Commissioner of Internal Revenue. Richardson, with her cohort in crime Stocker, has knowledge of Galaski's declaratory Order finding Galaski's reporting of prosecutorial misconduct, in *USA v. Marsh*, No. CR 93-0592-VRW, to be proper. Richardson, along with the entire Treasury Department, committed significant acts of corruption and cover-up of corruption under the "Operation Phoenix" project program and having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California or "elsewhere". also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

11. Lloyd Benson ("Benson"), who was at all relevant times herein an individual residing in Washington, District of Columbia, is named personally and professionally, of which party is employed by the United States of America, in the United States Treasury Department, Secretary of the Treasury. Benson, with his cohorts in crime Richardson and [illegible]ocker, have knowledge of Galaski's declaratory Order finding Galaski's [illegible]orting of prosecutorial misconduct, in *USA v. Marsh*, No. CR 3-[illegible]592-VRW, to be proper. Benson, along with the entire Treasury department, committed significant acts of corruption and cover-up of corruption under the Operation Phoenix project program and having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California or "elsewhere", also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

12. DOES 1 THROUGH 100, ("DOES"), who were at all relevant times herein individuals residing in throughout the United States of America or "elsewhere" are named personally, professionally, or otherwise, of which parties are employed by the United States government. Does have knowledge of Galaski's declaratory Order finding Galaski's reporting of prosecutorial misconduct, in *USA v. Marsh*, No. CR 93-0592-VRW, to be proper. Does committed significant acts of corruption and cover-up of corruption under the "Operation Phoenix" project program

and having refused to immediately take Galaski's reporting to the federal grand jury sitting at San Francisco, California or "elsewhere", also in violation of Section 1509 of Title 18 United States Code - criminal obstruction of a court order.

13. John Salter has been named herein for stipulation purposes only concerning testimony of executive corruption and cover-up of corruption supporting this .

**FACTS**

14. Galaski hereby incorporates by reference thereto, paragraphs numbered 1 through 13 hereinabove of this crossclaim in support hereof.

15. Galaski has made a proper reporting to the federal grand jury sitting at San Francisco, California, or "elsewhere" concerning prosecutorial misconduct including to the two sets of tax returns under the paradoxical "PBS" Internal Revenue Service ruling according to attached Exhibit TC-1 according to Order entered and served upon Galaski by the United States District Court, District of Nevada, at Las Vegas, Nevada on April 14, 1994.

16. Galaski made several attempts to appear before federal grand juries sitting at San Francisco, California, Honolulu, Hawaii, Washington, District of Columbia, and Las Vegas, Nevada in pursuance of declaratory Order entered and served in the United States District Court at Las Vegas, Nevada, in the case of Galaski v. San Francisco, California, Federal

Grand Jury et al., No. CV-940009-PMP connected with the prosecutorial misconduct involving the matter of *USA v. Marsh*, CR 93-0592-VRW. Defendants have refused and obstructed Galaski from making his requested written appearance before any one of the above-mentioned federal grand juries.

17. Defendants federal grand juries, sitting at Honolulu, Hawaii, have refused to act upon Galaski's reporting since March of 1994.

18. *Res judicata* attaches to this crossclaim considering the attached declaratory Order entered and served April 14, 1994 in the United States District Court, District of Nevada, at Las Vegas, Nevada (Exhibit TC-1) which is also connected to the two sets of tax returns under the paradoxical "PBS" Internal Revenue Service ruling.

19. On or about May 12, 1994, it was reported to Galaski, by Lighter, that a portion of Galaski's federal grand jury reporting, of which Galaski attempted to make before the federal grand jury sitting at San Francisco, California, had been forwarded with Lighter's grand jury reporting to a sitting federal grand jury sitting at Honolulu, Hawaii acknowledged by letter dated March 24, 1994 addressed to Lighter from Assistant United States Attorney Leslie E. Osborne, Jr., office of the United States Attorney, Honolulu, Hawaii.

## CAUSES OF ACTION

### COUNT 1

20. Galaski incorporates by reference hereto, in support hereof not



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limited thereto, paragraphs numbered 1 through 21 hereinabove of this crossclaim.

22. Defendants, except for Salter, and each one of them to date were provided a copy of, or circulated knowledge concerning Galaski's lawsuit, supporting memorandum, declarations and the declaratory Order entered and served April 14, 1994 in the United States District Court, District of Nevada in the case of *Galaski v.San Francisco, California, Federal Grand Jury, et al.*, No. CV-94-0009-PMP; however defendants, except for Salter, purposely refused and obstructed Galaski from taking his grand jury reporting of prosecutorial misconduct involving the case of *USA v. Marsh et al.*, CR 93-0592-VRW to the federal grand jury sitting at San Francisco, California, or "elsewhere". See declaratory Order attached as TC-1.

COUNT II

21. Defendants, except for Salter, and each one of them to date have purposely refused and obstructed Galaski from taking his grand jury reporting of prosecutorial misconduct involving the case of *USA v. Marsh et al.* CR 93-0592-VRW to the federal grand jury sitting at San Francisco, California, or "elsewhere" also in violation of Section 1504 of Title 18 United States Code which provides Galaski with an unqualified appearance before the federal grand jury upon his written communication.

COUNT III

22. Defendants, except for Salter, and each one of them to date have purposely refused and obstructed Galaski from taking his grand jury reporting of prosecutorial misconduct involving the case of *USA v. Marsh, et al.*, CR 93-0592-VRW to the federal grand jury sitting at San Francisco, California, or "elsewhere" also in violation of Section 1509 of Title 18 United States Code which provides a criminal penalty for obstruction of a Court order.

COUNT IV

23. Defendants, except for Salter, federal grand juries sitting at Honolulu, Hawaii, and each of the members of same thereof, have violated their oath of office, charge made to same by the Court, and are now also criminally culpable for damages in refusing to take action upon Lighter's and Galaski's grand jury reporting made to same. See Imber v. Patchman, 424 U.S. 409 (1976).

COUNT V

24. Defendants, except for Salter, and each one of them have invaded Galaski's federally protected absolute constitutional rights to be secure in his house, papers and effects and/or due process of law, but not limited thereto, guaranteed to Galaski by the Fourth and Fifth Articles (Amendments) to the original organic Constitution for the United States of America as found by declaratory Order entered and served April 14, 1994

in the United States District Court, District of Nevada in the case of *Galaski v. San Francisco, California, Federal Grand Jury, et al.*, No. CV-94-0009-PMP, concerning Galaski's reporting of prosecutorial misconduct involving the case of *USA v. Marsh et al.*, CR 93-0592-VRW. See declaratory Order attached as TC-1.

COUNT VI

25. Defendants and each one of them, except for Salter, are currently involved in joint Treasury and Justice department covert "Operation Phoenix" project program involving corrupt influence upon the federal court system to force judges around the country to give stiff prison sentences as a deterrent to suppress the truth and advocacy of the tax laws of the United States.

DEMAND FOR RELIEF

26. Galaski hereby makes demand for adjudication of this crossclaim as enumerated in the prayer for relief herebelow, under the judicial power of the United States as provided for by Article III of the original organic Constitution for the United States of America.

27. That an Order to Show Cause be issued out of this Court commanding defendants, except Salter, to show cause as to why they should not be held accountable both personally and professionally for their refusal to act upon declaratory Order received by Galaski from the United States District Court, District of Nevada at Las Vegas, Nevada, entered

and served April 14, 1994, in the case of *Galaski v. San Francisco, California, Federal Grand Jury, et al.*, CV-94-0009-PMP.

28. That a Writ of Mandamus be issued out of this Court commanding the Hawaii Federal Grand Juries to perform the function of their office under their oath and charge made to same by this Court -compelling and requiring same to receive, accept, and consider testimony to be rendered by Lighter and Galaski unfettered and unimpaired by any branch of any government.

29. That Galaski be awarded costs of suit and reasonable attorney's fees under the federal Equal Access To Justice Act; and

30. For such other further relief as this Court deems appropriate, just, or proper and equitable in the premises.

**VERIFICATION**

I, Gregory J. Galaski, do hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge as I believe same to be true and correct, as God as my witness. Executed under Section 1746(1) of Title 28 United States Code at Las Vegas, Nevada this 30th day of July, 1994.

_____/S/_____
Gregory J. Galaski, *In Propria Persona* and *Sui Juris*

[Certificate of Service omitted in reprinting, but exhibits included herewith]

[ENTERED AND SERVED: *APR 14, 1994*]

[Heading omited in reprinting]

[UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA NO. CV-S-94-00009-PMP, GREGORY J. GALASKI, ET AL. v. SAN FRANCISCO, CALIFORNIA FEDERAL GRAND JURY, ET AL.]

ORDER

On March 3, 1994, this Court entered an Order (#15) providing that in the event Plaintiff Galaski believes he has information which should be called to the attention of a Federal Grand Jury sitting at San Francisco, California, or elsewhere, he should communicate that information to the United States Attorney for the Federal District in question and/or the foreperson of the Federal Grand Jury at that location.

On Or about March 31, 1994 (#20 and #21), it appears Plaintiff Galaski followed the directive of this Court by causing to be directed to the foreperson of the Federal Grand Jury sitting in the Northern District of California at San Francisco, a variety of materials raising claims asserted in the instant action.

On April 11, 1994, this Court received a letter from Assistant United States Attorney Sandra L. Teters, from the Office of the United States Attorney for the Northern District of California, advising this Court that Plaintiff Galaski is a defendant in a criminal proceeding instituted in United States District Court for the Northern District of California in November 1994, and now by Superseding Indictment returned by the Federal Grand Jury sitting at San Francisco, California, on March 14, 1994, and that a

warrant for the arrest of Plaintiff Galaski has been outstanding since November 29, 1993. On that same date, this Court advised the United States Marshal for the District of Nevada of the receipt of AUSA Teters' letter and of the existence of the warrant of arrest for Plaintiff Gregory Galaski.

It appearing to this Court that Plaintiff Gregory Galaski will have a full opportunity to raise the issues asserted in this action in connection with pending criminal proceedings in United States District Court for the Northern District of California in Case No. CR-93-0592-VRW, United States v. Gregory Galaski, and that Plaintiff Galaski will at the same time have every opportunity to file any appropriate civil actions in United States District Court for the Northern District of California where the Federal Grand Jury which is the object of his complaints currently sits, and good cause appearing.

IT IS ORDERED that Plaintiff Gregory Galaski shall have to and including May 6, 1994, within which to show cause in writing why Plaintiff's Complaint in this action should not be dismissed. Failure to respond to this Court's Order to Show Cause will result in an Order of Dismissal of Plaintiff's Complaint herein.

IT IS FURTHER ORDERED that the Clerk of the Court shall forthwith file the materials received this date from AUSA Sandra Teters, together wtih the attachments thereto.

DATED: April 12, 1994.

/S/
PHILIP M. PRO
United States District Judge

[ENTERED AND SERVED: *FEB 22, 1994*]

[Heading omited in reprinting]

[UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA NO. CV-S-94-00009-PMP, GREGORY J. GALASKI, ET AL. v. SAN FRANCISCO, CALIFORNIA FEDERAL GRAND JURY, ET AL.]

**ORDER**

Before the Court is Plaintiff Gregory J. Galaski's Amended Request for Default Judgment (# 6) filed February 8, 1994, Request to Withdraw Order (# 7) filed February 16, 1994, and his Supplemental Declaration Resulting From Request for Default Judgment (# 8) filed February 16, 1994.

Galaski's Complaint (# 1) seeks damages against "San Francisco Grand Jury" and 100 as yet unnamed other Defendants. The gravamen of Galaski's Complaint is that the Grand Jury failed to take action on an ex parte motion to withdraw indictment prepared by Galaski for a matter in the U.S. District Court for the Northern District of California.

It appears to this Court that the sole named Defendant is immune from suit. Grand jurors perform quasi-judicial functions and are therefore accorded immunity. See Imbler v. Pachtman, 424 U.S. 409, 423 n.20 (1976); Schlegel v. Bebout, 841 F.2d 937, 942 (9th Cir. 1988). Thus, the Court will deny Plaintiff's Amended Request for Default (# 6). The Court, however, will permit Plaintiff to file an Amended Complaint, in which he may, in good faith, allege facts demonstrating why the Grand Jury should not be accorded immunity, or attempt to allege claims against a defendant who does not enjoy immunity from suit.

IT IS THEREFORE ORDERED THAT Plaintiff's Amended Request for Default Judgment (# 6) and Request to Withdraw Order (# 7) are denied.

IT IS FURTHER ORDERED THAT Plaintiff may file an Amended Complaint no later than Friday, April 15, 1994, at 4:00 p.m. Failure to file said Amended Complaint shall result in the dismissal of Plaintiff's action.

IT IS FURTHER ORDERED THAT the Clerk of Court shall resubmit this case to the undersigned on Monday, April 18, 1994.

DATED: February 17, 1994.

/S/
PHILIP M. PRO
United States District Judge

[SEAL] DEPARTMENT OF THE TREASURY [SEAL]
OFFICE OF INSPECTOR GENERAL
REGIONAL INSPECTOR GENERAL FOR INVESTIGATIONS
WESTERN REGION
222 NORTH SEPULVEDA BLVD., SUITE 740
EL SEGUNDO, CA 90245

Gregory J. Galaski
4001 S. Decatur Blvd. #212
Las Vegas, Nevada 89103

Dear Mr. Galaski,

This is in response to your April 11, 1994 letter. We have reviewed the information you provided and determined your issues are best addressed by the agency involved. Therefore, we are referring your information to:

John C. Stocker, Assistant to the Deputy Commissioner
Internal Revenue Service; 1111 Constitution Avenue, N.W.,
Room 3014; Washington, D.C. 20224

We Appreciate you bringing this to the attention of the Office of Inspector General.

Sincerely,

/S/

Rafael W. Garcia
Regional Inspector General for Investigations, Western Region

A00117

[SEAL] U.S. Department of Justice

OFFICE OF PROFESSIONAL RESPONSIBILITY

Washington, D.C. 20530

JUN 13, 1994

Gregory J. Galaski
4001 S. Decatur Blvd. #212, Las Vegas, Nevada 89103

Dear Mr. Galaski,

We have reviewed the material you submitted to this office by letter dated May 3, 1994. We have concluded that the proper forum for the issues you raise is the Court supervising the case in which you are a defendant. Consequently, this office will not investigate those issues.

Sincerely,

/S/

Michael E. Shaheen, Counsel

[RECEIVED AND FILED: *APR 8, 1994*]

[Heading omitted in reprinting]

[U.S. DISTRICT COURT, DISTRICT OF NEVADA STATE, NO. CV-S-94-00009-PMP, GREGORY J. GALASKI v. SAN FRANCISCO, CALIFORNIA FEDERAL GRAND JURY, ET AL.]

**FIRST SUPPLEMENTAL DECLARATION OF GREGORY J. GALASKI IN SUPPORT OF VERIFIED AMENDED COMPLAINT REGARDING LOSS TO BUSINESS AND REPUTATION INVOLVING DEFENDANTS PREMEDITATED UNCONSTITUTIONAL CONDUCT; VERIFICATION**

I, Gregory J. Galaski, do hereby declare:

1. I am the plaintiff in the above-captioned proceeding, and am competent to testify as to the matters involving the uncontested evidence, and testimony entered in the above-captioned proceeding.

2. I hereby submit the uncontested record in this case by reference thereto as though get forth in full in support herein.

3. The uncontested record in this case reveals that I have been accepted as an independent advocate/consultant involved in defense and lawful execution of the tax laws of the United States privately representing or assisting public and business interests.

4. Tho instant cause of action in this case against defendants premeditated schemed unconstitutional conduct has been taken by me for the preservation and protection of my absolute right to be secure in my house, papers, and effects and/or my right to due process of law which have been invaded, or has been threatened to be invaded by defendants, and/or by other federal officials contrary to the Fourth and Fifth Articles to the Constitution for the United States of America, their oath and charge to

same by the Court.[1]

5. I have suffered great humiliation, embarrassment, and mental suffering as a result of defendants cited premeditated schemed unconstitutional conduct.

6. I have suffered substantial loss to business and reputation as a result of defendants cited premeditated schemed unconstitutional conduct.

7. I have not been able to regain substantial loss to my business and reputation as an independent advocate/consultant representing both public and business interests before the U.S. Treasury department as a result of defendants cited premeditated schemed unconstitutional conduct.

8. I will never be able to regain substantial loss to my business and reputation as an independent advocate/consultant representing both public and business interests before the U.S. Treasury department as a result of defendants cited premeditated schemed unconstitutional conduct.

9. I have not been able to lead a normal life due to the substantial loss to my business and reputation as a result of defendants cited premeditated schemed unconstitutional conduct.

10. I will never be able to lead a normal life due to the substantial loss to my business and reputation as a result of defendants cited premeditated schemed unconstitutional conduct.

11. I will not be able to afford the necessities of life, and I will not be

---

1 The reference to "Article" is redefined to mean "Amendment" which otherwise is based on a literal reading of the so called amendments to the original organic Constitution.

able to contribute the support of my family due to the substantial loss to my business and reputation as a result of defendants cited premeditated schemed unconstitutional conduct.

12. Defendants cited premedi tated schemed unconstitutional conduct has severally impaired my ability to afford the necessities of life, and has jeopardized the well-being and welfare of my family.

13. Defendant DOE Noah Woo has filed a lawsuit which obstructs the property bond assigned to me as security to cover the costs of federal grand jury scrutiny; failed to include me as an indispensable party as required under Rule 19, Federal Rules of Civil Procedure, and also substantially has impaired my business and reputation as a result of said obstruction which has put myself, and family at risk. *Also see* Notice Re: Submission of Documents Filed In This Case With The Federal Grand Jury Sitting At Honolulu, Hawaii; And Notice Re: Related Civil Action No. 94-00179 United States District Court, District of Hawaii, Answer to Complaint, etc., ELEVENTH DEFENSE, page 14.

14. I reserve the opportunity to add to this supplemental declaration when new information, or evidence becomes available.

FURTHER DECLARER SAYS NOT.

I, Gregory J. Galaski, do hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief as I

believe same to be true and correct. Executed under Section 1746(1) of Title 28 United States Code this 7th day of April, 1994 at Las Vegas, Nevada.

/S/
GREGORY J. GALASKI, *In Propria Persona & Sui Juris*

[Certificate of Service omitted in reprinting]



A00122

[File Stamped: *(a) RECEIVED AUG 24, 1994*
*(b) LODGED AUG 24, 1994*
*(c) FILED AUG 24, 1994*]

[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**REQUEST FOR ENTRY OF DEFAULT AGAINST DEFENDANTS FOUR HAWAII FEDERAL GRAND JURIES AND SAN FRANCISCO FEDERAL GRAND JURIES IN CR. 93-0592VRW; AFFIDAVIT OF ERIC AARON LIGHTER; ENTRY JURIES AND SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW;CERTIFICATE OF SERVICE**

It appearing that the above-named Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW are in default for failure to plead or otherwise defend as to the Third-Party Complaint as of Right as required by law, request for default is hereby entered as against said Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW in accordance with Rule 55(a) of the Federal Rules of Civil Procedure.

DATED: Honolulu, Hawaii, August 24, 1994.

_____/S/_____
ERIC AARON LIGHTER [etc.]
*Sui Juris* and *In Propria Persona*

[Heading omitted in reprinting]

AFFIDAVIT OF ERIC AARON LIGHTER

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

I, ERIC AARON LIGHTER, upon being duly sworn, depose and say:

1. That he is the Third Pary Complaintant in the above-entitled action, individually and Wells Fargo Protective Alarm Service;

2. That true and certified copies of the Third Party Complaint and Summons, together with all exhibits thereto, filed June 18, 1994 in the above-entitled action, were served on Third Party Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW on July 15, 1994.

3. That the time within which Third Party Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW may answer or otherwise move as to the Crossclaim as of Right has expired;

4. That Third Party Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW have not answered or otherwise move by the stated date and time for Third Party Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW to answer or otherwise move as to the Crossclaim as of Right has not been extended.

Dated: Honolulu, Hawaii, August 24, 1994.

Further Affiant sayeth naught.

_____/S/_____
ERIC AARON LIGHTER

[Jurat]



A00125

[Heading omitted in reprinting]

**ENTRY JURIES AND SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW; CERTIFICATE OF SERVICE**

It appearing that the above-named Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW are in default for failure to plead or otherwise defend as to the Third-Party Complaint as of Right as required by law, default is hereby entered as against said Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW in accordance with Rule 55(a) of the Federal Rules of Civil Procedure.

DATED: Honolulu, Hawaii,_____.

_____

Clerk of the above-entitled Court

[Certificate of Service omitted in reprinting]

# MINUTES

Filed August 24, 1994 4:30 p.m.

CASE NUMBER : CV 94-00179HMF

CASE NAME : Hawaii-Pacific Wholesalers, Inc. vs. Eric A. Lighter, et al.

APPERANCES BY P:

D:

---

JUDGE: Harold M. Fong REPORTER:

DATED: August 24, 1994 TIME:

---

COURT ACTION: EO: On request for entry of Default by Eric Lighter, against Defendants Four Hawaii Federal Grand Juries and San Francisco Federal Grand Jury, Judge Harold M. Fong advised Mr. Chinn not to enter Default. Mr. Lighter was personally informed of this by Mr. Chinn.

Leslie L. Sai

Courtroom Deputy Clerk

A00127

[FILED: *AUG 26, 1994*]

[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**SECOND AFFIDAVIT OF ERIC AARON LIGHTER IN SUPPORT OF REQUEST FOR ENTRY OF DEFAULT AGAINST FOUR HAWAII FEDERAL GRAND JURIES AND SAN FRANCISCO FEDERAL GRAND JURIES IN CR. 93-0592VRW; EXHIBITS "A" AND "B"; CERTIFICATE OF SERVICE**

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

I, ERIC AARON LIGHTER, upon being duly sworn, depose and say:

1. That he is the Third Party Complaint in the above-entitled action, individually and dba Wells Fargo Protective Alarm Service;

2. That a true and certified copies of the Third Party Complaint and Summons, together with all exhibits thereto, filed June 18, 1994 in the above-entitled action, were duly served on Third Party Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURIES IN CR. 93-0592VRW on July 15, 1994.

3. That the time within which Third Party Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURIES IN CR. 93-0592VRW may answer or otherwise move as to the Crossclaim as of Right has expired;

4. That Third Party Defendants FOUR HAWAII FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURIES IN CR. 93-0592VRW have not answered or otherwise moved by the stated date and the time for Third Party Defendants FOUR HAWAII FEDERAL

GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURIES IN CR. 93-0592VRW to answer or otherwise move in regard to the Crossclaim as of Right has not been further extended.

5. That on August 24, 1994 there was filed in this case by Affiant that certain Request For Entry Of Default Against Defendants Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr. 93-0592VRW, Affidavit Of Eric Aaron Lighter, Entry Of Default Against Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr. 93-0592VRW, Certificate of Service ("8/24/94 Default Request"), a true and accurate copy thereof annexed hereto by attachment as Exhibit "A". Said Exhibit "A" shows said 8/24/94 Default Request having been filestamped "Received", "Lodged" and "Filed", all on August 24, 1994.

6. At first, Affiant was told by a polite Courtroom Deputy Clerk that the 8/24/94 Default Request would be "bounced" because the Federal Grand Jury was "part of the government." Affiant replied that the Federal Grand Jury is not part of the three branches of government, and referenced the Fifth Amendment of the United States Constitution. Then, the Clerk of the Court, gentleman Walter A.Y.H. Chinn, personally told Affiant that, "Judge Fong ordered (emphasis added) him (Mr. Chinn) to file it (the 8/24/94 Default Request") but not to sign the default." When Affiant inquired why, Mr. Chinn replied that (the Honorable) Judge (Harold M.) Fong (former Chief Judge) told Mr. Chinn that there is, "some question as



A00129

to whether the (Federal) Grand Jury is an entity (emphasis added)." The discussion continued briefly, and Affiant was led to the understanding that Judge Fong considered the the status of Federal Grand Jury to be in question. Affiant was told that all of this would be put into a Minute Order. The unsigned Minute Order issued differs from what Affiant was told, partially in fact and partially in completeness, i.e. there is no reason stated in writing as to why the 8/24/94 Default Request was not to be signed, see a true and accurate copy thereof annexed hereto as Exhibit "B".

7. Affiant has inspected the Federal Rules of Civil Procedure ("FRCP"), Rule 55(a). Rule 55(a) gives the Clerk of the Court no discretion regarding entry of a default. Further, judgement should be granted upon request pursuant to Rule 55(c), unless the Court rules that the Federal Grand Jury is either a minor or incompetent. The Federal Grand jury is not a minor. The Federal Grand Jury must therefore be incompetent. Perhaps there are rouge Federal Grand Jury forepesons signing indictments. At any rate, even if a myna bird or a rock were sued, the request for entry of default would come under the language in Rule 55(a), "the clerk shall (emphasis added) enter the party's default." Therefore, Affiant again requests the Clerk of the Court to entry default upon FOUR FEDERAL GRAND JURIES and SAN FRANCISCO FEDERAL GRAND JURY IN CR. 93-0592VRW.

8. Lastly, Affiant has been sanctioned by Judge Fong for allegedly,

essentially, failing to follow the rules. Affiant should not suffer this burden without the Clerk of the Court, and the Court, doing likewise.

Dated: Honolulu, Hawaii, August 26, 1994.

Further Affiant sayeth naught.

/S/
ERIC AARON LIGHTER

[Jurat]

[Exhibits "A" and "B", and Certificate of Service omitted in reprinting]

[FILED: *SEP 15, 1994*]

[Heading omitted in reprinting]

**ORDER DENYING MOTION FOR ORDER DIRECTING ENTRY OF DEFAULT JUDGMENT**

Crossclaimant Gregory J. Galaski ("Galaski") moves this court pursuant to Fed. R. Civ. P. 55(b)(2) for an entry of default judgment against third party defendants Four Hawaii Federal Grand Juries and San Francisco Federal Grand Jury. Galaski claims that a true and correct copy of his third-party crossclaim was served on Four Hawaii Federal Grand Juries through the Office of the Clerk, United States District Court, District of Hawaii, and on San Francisco, California, Federal Grand Jury in Cr. 93-0592 VRW through the jury administrator Odile Hanson. See Declaration of Gregory J. Galaski at ¶¶ 2-3. Galaski also claims that the time within which to respond to his crossclaim has expired and thus entry of default is proper.

Fed. R. Civ. P. 55 provides:

> (a) Entry. When a party against whom judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.
>
> (b) Judgment. Judgment by default may be entered as follows:
> (2) By the Court . . .[When claim is not for a sum certain] . . . the party entitled to a judgment by default shall apply to the court therefor; . . .

As a procedural prerequisite, Galaski must request entry of default pursuant to Rule 55(a) before default judgment can be entered pursuant to Rule 55(b)(2). No reaqest for entry of default has been made by

Galaski; accordingly, this court cannot enter the requested default judgment. Moreover, a prior request for entry of default by defendant Eric Aaron Lighter against San Francisco Federal Grand Jury in CR. 93-0592VRW, one of the parties against whom Galaski requests default, was denied by this court and the Clerk of the Court, Walter Chinn on August 24, 1994. Accordingly, Galaski's request for entry of default judgment is DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, SEP 15, 1994.

/S/
UNITED STATES DISTRICT JUDGE

HAWAII-PACIFIC WHOLESALERS, INC., ET AL., VS. ERIC AARON LIGHTER, ET AL.; CIV. NO. 94-00179 HMF; ORDER DENYING MOTION FOR ORDER DIRECTING ENTRY OF DEFAULT JUDGMENT

[FILED: *OCT 11, 1994*]

[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**AMENDED EX PARTY MOTION OF GREGORY J. GALASKI FOR RECONSIDERATION OF REQUEST FOR ENTRY OF DEFAULT JUDGMENT (F.R.Civ.P. 55{B})]**

COMES NOW crossclaimant Gregory J. Galaski ("Galaski") and hereby moves this Court to reconsider Galaski's Request for Entry of Default Judgment as a request for entry of default judgment under Rule 55(b)(1), Federal Rules of Civil Procedure, where no sum certain is involved. Accord *United States v. Topeka Livestock Auction, Inc.*, 392 F.Supp. 944 (ND Ind. 1975).

In support of this motion, Galaski respectfully shows unto this Court::

First, Galaski requests, under Rule 201 Federal Rules of Evidence, that this Court take judicial notice of the fact that defendant San Francisco, California, Federal Grand Jury in particular has been on notice of Galaski's prior related cause of action in the case of *Galaski v. San Francisco, California, Federal Grand Jury*, U.S.D.C. Nevada CV-S-94-0009 (1994) and declaratory Order entered and served April 14, 1994 including this cause of action for an accumulative period of time of over 9 months, and that the same defendant has failed to enter an appearance, answer or otherwise plead to Galaski's complaints.

Therefore Galaski is not required to give the defendants, named in Galaski's request for entry of default judgment, notice of his request for entry of default judgment. Accord *Taylor v. Boston Tauntor Trans. Co.*,

720 F.2d 731 (lst Cir. 1983).

Additionally Rule 55(e), Federal Rules of Civil Procedure, does not apply where Galaski has made a prima facia case established by declaratory Order entered and served April 14, 1994 in the case of *Galaski v. San Francisco, California, Federal Grand Jury*, CV-94-0009-PMP (Exhibit TC-1), and where defendant, namely the San Francisco, California, Federal Grand Jury has had notice of Galaski's complaints and failed to appear, answer, or otherwise plead to Galaski's causes of action given the circumstances under which this Court continues to treat the same particular defendant as an entity of the executive branch. *Giampaoli v. Califano*, 628 F.2d 1190 (9th Cir. 1980); accord *Stinger v. Heckler*, 585 F.Supp. 709 (WD Ky 1983).

Second. Galaski has shown prejudice for entering default judgment in his favor given the Court's prior declaratory Order firding that Galaski's amended complaint to be a proper reporting to the San Francisco, California, Federal Grand Jury related to an indictment returned against Galaski by an illegally constituted tampered federal grand jury in the case of *United States v. Galaski, et al.*, No. CR-93-0592 VRW (Exhibit TC-1), and that an invasion of Galaski's certain federal protected constitutional rights has severally affected Galaski's real and personal property rights, and Galaski's rights to life and liberty. See Exhibit TC-5 on record in this case. Galaski's real property rights, held in Las Vegas, Nevada, is in jeopardy of being foreclosed upon given that he can not find steady

employment to support both his family and his household as a result of the ficticious trial in which Galaski is being forced to participate which does not reach constitutional Proportions which the Court found in Galaski's prior action.

The only question left is whether this Court will not reconsider Galaski's request for entry of default judgment where significant damages may be involved. Re Author Treacher's Franchisee Litigation, 92 FRD 398 (ED Pa. 1981) However, on the other hand, Galaski's request for entry of default judgment should be granted where the Court in Galaski's prior action, i.e. Exhibit TC-1, found in its declaratory order that Galaski had made a proper reporting to the federal grand jury sitting at San Francisco, California, and that the same defendant has had notice of Galaski's pending actions for over 9 months, and that their failure to take action upon Galaski's proper reporting has severally affected Galaski's federal protected constitutional rights to his life, liberty, and property compelling Galaski into partaking in a trial involving an indictment which does not reach proportions under the Fifth Amendment.

The foregoing circumstances considered Galaski is entitled to reconsideration of this motion for entry of default judgment under Rule 55(b)(1), Federal Rules of Civil Procedure.

Dated this 6th day of October, 1994.

/S/
Gregory J. Galaski, *In Propria Persona* and *Sui*

[Jurat]

[Filestamped: *RECEIVED OCT 3, 1994*, FILED: *OCT 12, 1994*]

[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**[*Handwritten*] *ORDER DENYING ~~EX PARTE~~* MOTION OF GREGORY J. GALASKI FOR RECONSIDERATION OF REQUEST FOR ENTRY OF DEFAULT JUDGMENT**

COMES NOW crossclaimant Gregory J. Galaski ("Galaski") and hereby moves this Court to reconsider Galaski's Request for Entry of Default Judgment as a request for entry of default judgment under Rule 55(b)(1), Federal Rules of Civil Procedure, where no sum certain is involved. Accord *United States v. Topeka Livestock Auction, Inc.*, 392 F.Supp. 944 (ND Ind. 1975).

In support of this motion, Galaski respectfully shows unto this Court:

First, Galaski, under Rule 201 Federal Rules of Evidence, that this Court take judicial notice of the fact that defendant San Francisco, California, Federal Grand Jury in particular has been on notice of Galaski's prior related cause of action in the case of Galaski v. San Francisco, California, Federal Grand Jury, U.S.D.C. Nevada CV-S-94-0009 (1994) and declaratory Order entered and served April 14, 1994 including this cause of action for an accumulative period of time of over 9 months, and that the same defendant has failed to enter an appearance, answer or otherwise plead to Galaski's complaints.

Therefore Galaski is not required to give the defendants, named in Galaski's request for entry of default judgment, notice of his request for entry of default judgment. Accord *Taylor v. Boston & Tauntor Trans. Co.*,

720 F.2d 731 (1st Cir. 1983).

Additionally Rule 55(e), Federal Rules of Civil Procedure, does not apply where Galaski has made a prima facia case established by declaratory Order entered and served April 14, 1994 in the case of *Galaski v. San Francisco, California, Federal Grand Jury*, CV-94-0009-PMP (Exhibit TC-1), and where defendant, namely the San Francisco, California, Federal Grand Jury has had notice of Galaski's complaints and failed to appear, answer, or otherwise plead to Galaski's causes of action given the circumstances under which this Court continues to treat the same particular defendant as an entity of the executive branch. *Giampaoli v. Califano*, 628 F.2d 1190 (9th Cir. 1980); accord *Stinger v. Heckler*, 585 F.Supp. 709 (WD Ky 1983).

Second. Galaski has shown prejudice for not entering default judgment in his favor given the Court's prior declaratory Order finding that Galaski's amended complaint to be a proper reporting to the San Francisco, California, Federal Grand Jury related to an indictment returned against Galaski by an illegally constituted tampered federal grand jury in the case of *United States v. Galaski, et al.*, No. CR-93-0592 VRW (Exhibit TC-1), and that an invasion of Galaski's certain federal protected Constitutional rights has severally affected Galaski's real and personal property rights, and Galaski's rights to life and liberty. See Exhibit TC-5 on record in this case. Galaski's real property rights, held in Las Vegas,

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Nevada, is in jeopardy of being foreclosed upon given that he can not find steady employment to support both his family and his household as a result of the fictitious trial in which Galaski is bring forced to participate which does not reach constitutional proportions which the Court found in Galaski's prior action.

The only question left is whether this Court will not reconsider Galaski's request for entry of default judgment where significant damages may be involved. *Re Author Treacher's Franchisee Litigation*, 92 FRD 398 (ED Pa. 1981) However, on the other hand, Galaski's request for entry of default judgment should be granted where the Court in Galaski's Prior action, i.e. Exhibit TC-1, found in its declaratory order that Galaski had made a proper reporting to the federal grand jury sitting at San Francisco, California, and that the same defendant has had notice of Galaski's pending actions for over 9 months, and that their failure to take action upon Galaski's proper reporting has severally affected Galaski's federal protected constitutional rights to his life, liberty, and property compelling Galaski into partaking in a trial involving an indictment which does not reach constitutional proportions under the Fifth Amendment.

The foregoing circumstances considered Galaski is entitled to reconsideration of this motion for entry of default judgment under Rule 55(b)(1), Federal Rules of Civil Procedure.

Dated this 28th day of September, 1994.

/S/
Gregory J. Galaski, *In Propria Persona & Sui Juris*

[*Stamped:*] **DENIED**

/S/
HAROLD M. FONG

[*Handwritten*] *This is the same argument which court has already previously denied–no new grounds for reconsideration. HMF*

[*FILED: NOV 18, 1994*] [Heading, index and authorities, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**ERIC AARON LIGHTER, INDIVIDUALLY AND DBA WELLS FARGO PROTECTIVE ALARM SERVICE'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS BY THIRD-PARTY DEFENDANTS ROBERT AH NEE, DEBRA NOLAN, MAURICE SHIMINONISHI, HENRY KOJIMA, AND LESLIE OSBORNE; THIRD-PARTY PLAINTIFFS' DISMISSAL WITHOUT PREJUDICE OF THIRD-PARTY COMPLAINT AGAINST THIRD PARTY DEFENDANTS ROBERT AH NEE, DEBRA NOLAN, MAURICE SHIMINONISHI, HENRY KOJIMA, AND LESLIE OSBORNE, JR.**

1. COMES NOW, Defendant ERIC AARON LIGHTER, individually, and dba WELLS FARGO PROTECTIVE ALARM SERVICES COMPANY ("Lighter"), *sui juris* and *in propria persona*, and files this Opposition To Motion To Dismiss By Third-Party Defendants Robert Ah Nee, Debra Nolan, Maurice Shimonishi, Henry Kojima, And Leslie Osborne, Jr., Certificate Of Service, filed October 14, 1994 herein (hereinafter "10/14/94 Motion").

2. Pursuant to 28 U.S.C. § 1746(1), Lighter hereby declares under penalty of perjury that the following is correct to the best of his knowledge.

**BACKGROUND**

3. To the best of LIGHTER's knowledge and recollection, the background leading up to this case, and following up to this date, are described by the pleadings filed by LIGHTER in this case and the case quite similar to this case filed in the United States District Court ("USDC") for the District of Hawaii, Civil No. 93-00914-ACK, including any and all pleading stricken for any reason therein; such pleadings are annexed

hereto by reference as though annexed hereto by attachment, including the:

a. Answer To Complaint And Demand For Jury Trial, Demand For Recusals; Demand For Honest Federal Grand Jury To Comprehensively Scrutinize The Evidence In This Case, Request To Dismiss Case Or In The Alternative For Arbitration, Request For Declaratory Ruling Regarding HPW, Inc. Tax Returns, Declaration Of Eric Aaron Lighter, Exhibits "A", "B" And "C", Certificate Of Service, filed January 4, 1994 in said similar case USDC Civil No. 93-0914-ACK by Lighter, etc. (hereinafter Reference Exhibit "1"), annexed hereto by reference as though annexed hereto by attachment.

b. Second Affidavit of Eric Aaron Lighter In Support Of Request For Entry Of Default Against Four Hawaii Federal Grand Juries And San Francisco Federal Grand Jury In Cr. 93-0592VRW, Exhibits "A" And "B", Certificate Of Service, filed August 26, 1994 hereinafter Reference Exhibit "2"), annexed hereto by reference as though annexed hereto by attachment.

c. Affidavit of Eric Aaron Lighter, Re: Proof of Service Upon, Personally And Professionally, (1) Leslie Osborne, Jr., Assistant U.S. Attorney, Honolulu Office; And In The Honolulu, Hawaii Internal Revenue Service: (2) Robert Ah Nee, District Director, (3) Debra

Nolan, Chief of Examination Division, (4) Maurice Shiminonishi, PSP Chief, (5) Henry Kojima, Examination Group 001 Chief, Exhibits "1" Through "6", Certificate of Service, filed October 12, 1994 herein, (hereinafter Reference Exhibit "3"), annexed hereto by reference as though annexed hereto by attachment.

d. Request For Entry Of Default Against Defendants, Personally And Professionally, (1) Leslie Osborne, Jr., Assistant U.S. Attorney, Honolulu Office; And In The Honolulu, Hawaii Internal Revenue Service: (2) Robert Ah Nee, District Director, (3) Debra Nolan, Chief of Examination Division, (4) Maurice Shiminonishi, PSP Chief, (5) Henry Kojima, Examination Group 001 Chief, Affidavit of Eric Aaron Lighter, Entry Of Default Against (1) Leslie Osborne, Jr., Assistant U.S. Attorney, Honolulu Office; And In The Honolulu, Hawaii Internal Revenue Service: (2) Robert Ah Nee, District Director, (3) Debra Nolan, Chief of Examination Division, (4) Maurice Shiminonishi, PSP Chief, (5) Henry Kojima, Examination Group 001 Chief, Certificate Of Service, filed October 12, 1994 herein, (hereinafter Reference Exhibit"4"), annexed hereto by reference as though annexed hereto by attachment.

e. Eric Aaron Lighter's, Individually And dba Wells Fargo Protective Alarm Service's Motion For A New Trial Or, In The Alternative, For Amendment Of Judgement In Order Filed October

28, 1994 Herein, Eric Aaron Lighter's, Individually and dba Wells Fargo Protective Alarm Service's Memorandum In Support Of Motion For A New Trial Or, In The Alternative, For Amendment Of Judgement In Order Filed October 28, 1994 Herein, Affidavit of Nancy Diane LeRosa, Exhibits "A" And "B", Exhibits "1" Through "32", Certificate of Service, filed November 7, 1994 herein, (hereinafter Reference Exhibit "5"), annexed hereto by reference as though annexed hereto by attachment.

f. Eric Aaron Lighter's, Individually And dba Wells Fargo Protective Alarm Service's Memorandum In Opposition To Plaintiffs' Motion For Amendment Of "Order Denying Defendants' Motion To Disqualify Slaton And Granting Plaintiffs' Motion For A Declaratory Judgement And Granting Plaintiffs' Motion For A Preliminary Injunction" Filed October 28, 1994, Exhibits "A" Through "D", Certificate of Service, filed November 13, 1994 by Lighter herein, (hereinafter Reference Exhibit "6"), annexed hereto by reference as though annexed hereto by attachment.

g. Eric Aaron Lighter's, Individually And dba Wells Fargo Protective Alarm Service's, "Lighter") Answer And Demand For Jury Trial, Defendant/ Counterclaimant Lighter's Counterclaim Against All Plaintiffs, Exhibits "A" Through "E", Defendant Crossclaimant Lighter's Crossclaim Against Woo-Noah Victims Fund, Woo Noah

Grand Jury Investigation Group, Paradise Gold Recovery Fund, And Woo Tax Investigation Crisis Group, Third-Party Complaint Against (1) Lt. Col. (Ret.) John Stuart Salter, (2) Gregory Galaski, (3) Four Hawaii Federal Grand Juries, (4) San Francisco Grand Jury In Cr. 93-0592VRW, And The Following, Personally And Professionally: In The Honolulu, Hawaii Internal Revenue Office, (5) Robert Ah Nee, District Director, (6) Debra Nolan, Chief Of Examination Division, (7) Maurice Shiminonishi, PSP Chief, (7) Henry Kojima, Examination Group 001 Chief, (9) Plus, Leslie Osborne, Jr., Assistant U.S. Attorney, Honolulu Office, For Writ Of Mandamus And Other Relief, Exhibits "1" And "2", Summons, Certificate of Service, filed June 18, 1994 herein, where default was taken against herein Plaintiff Hideo Kobayashi for named Crossclaim (hereinafter Reference Exhibit"7"), annexed hereto by reference as though annexed hereto by attachment.

4. Related, Plaintiffs have not produced for Lighter the three boxes of exhibits promised in open Court October 24, 1994. Lighter has produced in discovery forty eight bankers boxes in storage. In addition, Lighter has produced seven additional bankers boxes of records that were recorded at the Hawaii Bureau of Conveyances, which are part of the over 106,000 pages of related records stored in the Hawaii Bureau of Conveyances on public microfilm, duly noticed to all parties hereto. It is



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especially useful to note the richly detailed background discussions in Reference Exhibits "1" and "5" through "7" herein, which are already annexed hereto by reference as though annexed hereto by attachment.

The background summary most relevant to the herein follows:

10/16/89 HPW, Inc. ("HPW") and Kobayashis purchase assets from Plaintiffs, wholesale juice warehouse business operated by HPW under Noah Woo's ("Woo's") iron control over HPW;

3/5/90 Attorney who structured and drafted transaction sends documents requiring $15.25 worth of postage (at early 1990 prices) to each party, Kobayashi andWoo, per their request, putting both sides on notice that no Bank of Hawaii escrow was established: at request of both parties 3 years of fraudulent tax returns prepared, signed and filed by Anthony Lee under the direction of Woo and Hideo Kobayashi ("Hideo");

7/25/93 Lighter led group buys option to purchase 50% of HPW stock, thought to be lost especially in face of recitals in conflict with those of two earlier agreements 7/20/93 and 7122193; American United Trust ("AUT") receives HPW stock and the Lighter group's 100% interest in deed to 1 acre lot in Manoa, Honolulu with assessed value of $600,000 and principal liens

of about $120,000; Lighter authorized and encouraged to audit HPW, plus prepare and file tax returns;

8/14/93 First tax return for HPW filed by Lighter, for period 10/1/92 to 6/30/93, which notes that HPW filed wrong prior returns;

8/15/93 Stock option exercised for $10.00, Lighter is bailee without notice of any restrictions on stock certificate or in 10/16/89 sales agreement since he saw neither; public notice of stock exercise, filed 8/17/93 at Hawaii Department of Commerce and Consumer Affairs ("DCCA");

9/1/93 Public notice at DCCA of Hideo's wife Beatrice becoming President of HPW as well a firm that owned vacant lot pursuant to that firm being the main trustee for AUT; Lighter becomes CEO and controls HPW Board of Directors;

9/13/93 Woo demands about $1.1 million from Kobayashis and HPW even though Woo is overpaid (there aren't even any signed invoices between Woo and HPW for some 4 years, although there is for everyone else);

9/20/93 Kobayashis demand they are rightfully seeking to have Woo arrested for massive embezzlement, and file for same with Honolulu Police;

9/23/93 Independent of HPW, Lighter individually purchases property at 2299 Roundtop Drive from Kobayashis, however subject to

a $300,000 second mortgage allegedly due Woo, but long since paid off without release; the Kobayashis knew they would lose the property to Woo in a long legal battle against him on the basis that Hideo probably had more paranoia of Woo than courage to fight for truth and justice (apparently also due to a secret deal between the two);

10/7/93 Property bond for $10,000, secured by property at 2299 Roundtop Drive, given to San Francisco Federal Grand Jury to cover costs of scrutiny of Operation Phoenix matters discovered by Gregory Galaski, IRS expert;

10/29/93 Lighter files second set of HPW tax returns with Internal Revenue Service ("IRS") Criminal Investigation Division ("CID") for 10/1/89 through 6/30/93;

11/10/93 Lighter offers CID a real property interest in two Notices of Implied or Constructive Trust ("NICT') on Woo's Waialae Iki property; NICT filed (9124193) and offered at the earlier insistence of Hideo in payment of HPW taxes (one NICT filed by Lighter as tax return preparer and personal recipient of damage from Woo, and one from HPW);

11/15/94 Lighter releases personal NICT pursuant to Plaintiffs because they finally asked for release, and because Lighter refuses to continue to be "set up" by Hideo and Noah to take the blame

for "interference" when the Kobayashis originally and for a long time begged and demanded that Lighter help them with Woo (who without objection that Lighter controlled HPW);

12/10/93 Lighter gives CID, via a trust, 9% interest in the equity of the property at 2299 Roundtop Drive, in payment of HPW taxes, and another interest to the one or more Federal Grand Juries in order to cover the cost of scrutiny of the matters herein;

12/23/93 Lighter served for 11/29/93 filed suit by Hideo, Beatrice and HPW, essentially to stop Lighter from continuing to be a whisleblower about the tax fraud of the Kobayashis and Woo, under the cover of wanting the property at 2299 Roundtop back even though they could never keep house;

2/23/94 Lighter moves the jurisdiction over HPW tax returns to Examination Division of IRS, c/o Henry Kojima, Examination Group 001;

3/12/94 Lighter served for 3/4/94 filed suit by Noah, et al., essentially to stop Lighter from continuing to be a whisleblower about the tax fraud of the Woo and Kobayashis;

3/24/94 Department of Justice declares that it has sent Lighter's--tax fraud and felony confession--material to at least one sitting Federal Grand Jury in Hawaii, see Exhibit"A" attached hereto;

various Lighter makes various felony tax confessions, including in

open court before Judge Fong on May 16, 1994, see line four, page four of 10/14/94 Motion.

5. In summary, Lighter filed a second set of HPW tax returns that oppose those filed by the Kobayashis and Woo, signed by Anthony Lee [Exhibits "D0002-D00028" of Exhibit B" of Reference Exhibit "1" hereto]. The two sets of returns are about $1.5 million different in (un)reported income. Lighter demanded that HPW pay the taxes on the unreported income not avoid them. Lighter attempted to follow, as required by orders, the "PBS Ruling" as described in the May 31, 1991 Federal Register, pages 24836 to 24843. Lighter made various voluntary, material felony confessions to tax felonies pursuant to high quantity and high quality, *prima facie* evidence. Lighter turned himself into the Federal Grand Juries along with the Kobayashis and Woo in order that the Federal Grand Juries be the tribunal in determining the criminal nature of the tax returns.

6. Lighter sued the federal personnel named in the Third-Party Complaint herein, both personally and professionally (a) for an order to obtain an order from the Court that it issue a Writ of Mandamus, ordering them to determine which tax return is felonious, (b) to respond to the felony confessions of Lighter, and (c) to answer for the corrupt, covert Operation Phoenix project described in the Third-Party Complaint herein.

7. Lighter sued the Federal Grand Juries (1) for an order from the Court that it issue a Writ of Mandamus, ordering them to determine which

tax return is felonious, (b) for demand to indict Lighter or the Hideo/Woo group for tax fraud, etc., especially pursuant to the felony confessions of Lighter, and (c) to scrutinize the unconstitutionally corrupt and covert Operation Phoenix project described in the Third-Party Complaint herein.

8. There are certain factual discrepancies in the 10/14/94 Motion, as follows:

a. Line ten and eleven of page two of the 10/14/94 Motion wrongly states that Lighter would like to confess, etc. Lighter did confess. Lighter is not "upset" that no one will charge him. Lighter is upset that the there are two applications of law, one for the rich and one for the masses, as amply demonstrated by two sets of tax returns being "blessed" by the certain select authorities for the same business entity and the same business period, for three different firms over a period of years.

b. Line fourteen of page two of the 10/14/94 Motion wrongly states that Lighter wants "his" returns audited. Lighter wants both sets of the HPW returns audited, as well as the other two firms also with the same PBS Ruling paradox.

c. Line one of page four of the 10/14/94 Motion wrongly states that Lighter sued two federal grand juries. Lighter sued four Federal Grand Juries in Hawaii and one in San Francisco, California, in Cr. 0592VRW.

d. Line two of page four of the 10/14/94 Motion wrongly states Lighter asked the Federal Grand Juries to "audit" HPW; but Lighter

actually asked IRS to audit.

**SERVICE PROPER, INTERACTION WITH THIRD-PARTY DEFENDANTS EXTENSIVE**

9. Service was proper pursuant to **Rules 4(c)(2)(C)(ii), 4(i)(1)(A)(B) and 4(d)(4)** of the Federal Rules of Civil Procedure, service was properly made, and included Notice and Acknowledgement For Service By Mail, Form 18-A of the Federal Rules of Civil Procedure.

10. The Third-Party Defendants (1) Leslie Osborne, Jr., Assistant U.S. Attorney, Honolulu Office; And In The Honolulu, Hawaii Internal Revenue Service: (2) Robert Ah Nee, District Director, (3) Debra Nolan, Chief of Examination Division, (4) Maurice Shiminonishi, PSP Chief, (5) Henry Kojima, Examination Group 001 (hereinafter together "Operation Phoenix Parties"), were properly named personally in the Third-Party Complaint herein pursuant to the extensive interaction Lighter has had with these parties regarding the issued sued upon, and the exhausting all administrative remedies thereby; see the highly indexed 106,000 pages of evidence filed on public microfilm in the Hawaii Bureau of Conveyances and noticed herein; and further, annexed hereto by reference as if annexed hereto physically.

**FEDERAL GRAND JURIES NOT REPRESENTED BY MOVANTS**

11. Neither the U.S. Attorney's Office nor the Operation Phoenix Parties represent any Federal Grand Juries and are estopped from speaking for same. The implication in the 10/14/94 is that these parties

represent as counsel or otherwise the Federal Grand Juries, but that is wrong, U.S. v. Chanen, 549 F2d 1306 (9th Cir.), Handbook for Federal Grand Jurors[1], Administrative Office of the U.S. Court, Washington, D.C. 20544.

**RICO CLAIMS DEMAND ALLEGATIONS OF INDICTABLE ACTS, THUS THE FEDERAL GRAND JURY IS A RELEVANT, ALBEIT ULTIMATE TRIBUNAL**

12. This case is purportedly a case based upon RICO claims, and the counterclaim certainly is. Exhibit "A" hereto is the Department of Justice's confirmation that these matters are before one or more Federal Grand Jury now. The tribunal authority of the Federal Grand Jury is supreme, and totally valid in this case were there are alleged indictable acts performed. **The Fifth Amendment of the United States Constitution** lists the power to conduct a PRESENTMENT first and INDICTMENT second. That is, the Federal Grand Jury's power to act NOT at the behest of the prosecutor or judge is superior, and in fact the original point of the Federal Grand Jury. There can only allegations of RICO violations for indictable acts, and thus the Federal Grand Jury has jurisdiction once the civil platform is removed with such acts as well evidenced, voluntary, material felony confession and suit on the Federal Grand Jury for failure to indict pursuant to same.

13. On page seven of the Handbook for Federal Grand Jurors, it

[1]Exhibit "16" of Exhibits "14" and "19" of the original Lighter Answer filed March 24, 1994 herein and Exhibit "B" of Lighter's 4/28/94 Plaintiff Memo.



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states, "(1) Matters may be brought to the attention [of the Grand Jury] in three ways: (1) by the United States Attorney or his assistants; (2) by the court that impaneled it [underline added]; and (3) from the personal knowledge of a member of the grand jury or from matters properly brought to a member's personal attention. In all these cases, the grand jury must hear evidence before taking action." On page twenty-three thereof, it states, "Just as it is hoped and expected that you will serve as the balance wheel between the Power of the government and the interests of personal liberty [underline added], it is also expected that you will achieve an appropriate balance in the exercise of your powers." On page twenty-four thereof, it states, "Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney [underline added], the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's office [underline added]." On page thirty-four, it states, Within your prescribed sphere, you occupy an important and independent office in the administration of justice. The government attorneys cannot dominate or command your actions. The court may guide. but cannot dominate or command your actions [underline added]".

14. These are important matters. Plaintiff's counsel was being silly

in his portrayal of LIGHTER's communications to Judge Kay.[2] LIGHTER has no animosity towards any judge. However, Judge Kay was incorrect in intercepting the grand juries's mail. The Chief Judge supervises and impanels the grand juries. The Chief Judge is responsible to forward communications to the grand juries, and same is in no way judicial intervention.

15. Plaintiff's counsel cites the same two cases that Judge Kay cites. In U.S. v. Chanen, this 1977 case elucidates how, "under constitutional scheme, grand jury is not and should not be captive to any of the three branches of government." However, the court "must compel grand jury witness to testify if, after appearing, such witness refuses to do so." Regarding the U.S. v. Chanen case, in Federal Grand Jury Practice, published by the Department of Justice, page 72, it states, "Chanen offers an excellent discussion of the supportive and complementary roles [supposed to be] played by court and prosecutor with respect to the work of the grand jury. The discussion supports the description of the grand jury being 'supervised' by the court rather than as an appendage of it [emphasis added]. The district court may properly deny a grand jury use of subpoenas to engage in 'the indiscriminate summoning of witnesses with no objective in mind and in the spirit of meddlesome inquiry and may curb a grand jury when it clearly exceeds its historic authority. Hale v.

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[2]See Exhibit "B" of April 28, 1994 Memorandum in Opposition, etc. filed by Plaintiffs herein.

Henkel, 201 U.S. 43,63 (1906)." The Grand Jury is impaneled by the Court pursuant to **Rule 6(a)**, Federal Rules of Criminal Procedure.

16. The other case cited by Plaintiffs and Judge Kay is In Re Antitrust Grand Jury Investigations, 714 F.2d 347, 350 (4th Cir. 1983). This case focuses on concerns regarding quashing a grand jury subpoena or otherwise determining whether the Grand Jury has misused its subpoena process. This in no way relates to the matter of the Grand Jury supervisor merely passing on the mail to the Grand Jury.

17. Further, in regards to the court's supervisory or administrative function in said Federal Grand Jury Practice, page 6, it states, "**Rule 6(c)** provides: 'The court shall appoint one of the jurors to be foreman and another to be deputy foreman.' USAM 9-11.340." The court's supervision can be broad. On page 26 of said Federal Grand Jury Practice, it states, "D. Disclosure Under Court Order: **Rule 6(e)(3)(C)(i),1**. General Rule, Disclosure of otherwise non-disclosable matter is permitted under rule **6(e)(3)(C)(i)** when the court so directs 'preliminarily to or in connection with a judicial proceeding.'

18. Judge Learned Hand, in the seminal case, defined "judicial proceeding" as follows: [T]he term 'judicial proceeding' includes any proceeding determinable by a court, having for its object the compliance of any person, subject to judicial control, with standards imposed upon his conduct in the public interest, even though such compliance is enforced

without the procedure applicable to the punishment of crime. Doe v. Rosenberry, 255 F.2d 118, 120 (2d Cir. 1958) (emphasis added)." On page 71 of said Federal Grand Jury Practice, fit states that "3. Power limited by district court, The grand jury is under the supervision of the courts. The grand jury must rely on the district court's subpoena and contempt powers, because it lacks its own enforcement power. Brown v. United States, 359 I).S.41 (1959)." and "Although a matter should not be presented to a grand jury in a district unless it has venue, the grand jury may investigate matters even though they occurred partly outside the district.

19. A witness cannot challenge the right of the grand jury to inquire into events that happened in another district. Blair v. United States, 250 U.S. 273, 282-3 (1919); In re May 1972 San Antonio Grand Jury, 366 F. Supp. (W.D. Tex., 1973). The grand jury has jurisdiction to investigate a conspiracy if it appears that it was formed in the district or any overt act occurred within the district. 18 U.S.C. Section 3237 [emphasis added]; Hyde v. Shine,199 U.S. 62 (1905); Downing v. United States, 348 F.2d 594 (5th Cir.) cert. denied 382 U.S.901 (1965)." Thus, venue can even overlap or be changed as appropriate. Riddle: who do you turn a tampered with federal grand jury over to? Answer: another federal grand jury in another venue, at least a de facto fourth branch of government.

20. The grand jury relies upon the court for delivery of its mail. The

grand jury is under at least quasi supervision of the Chief Judge, here Judge Alan C. Kay. Asking Judge Kay to forward the mail to the grand jury was proper and timely, especially when a voluntary felony confession supported by redundant, *prima facie* and high quality evidence was included. To thwart such a confession could be construed to be tantamount to Misprision of Felony, **18 USC § 4**, Accessory After the Fact, **18 USC § 3**, or as Principals, **18 USC § 2**, see paragraph nos. 32 and 36 below. The grand jury has jurisdiction to investigate the matters herein, and in fact was presented same by the Department of Justice, see Exhibit"A" hereto.

**SALTER ARGUED NEARLY IDENTICAL CASE**

21. Third-Party Defendant herein Lt. Col. (ret.) John Stuart Salter ("Salter") was forced to make virtually the identical arguments that Lighter must make in order to overcome the intense corruption and coverup of corruption perpetrated by the Operation Pheonix Parties.

**FBI DISCLOSURE SHOWS CERTAIN THIRD-PARTY DEFENDANTS CORRUPT**

22. Lighter's recently received Federal Bureau of Investigation ("FBI") Privacy Act disclosure, see Exhibit "C" hereto, demonstrates that corruption and coverup of corruption that Lighter had to endure in squaring off with those who would further the unconstitutional dual application of the Internal Revenue Code, one for the privileged and one for the masses. Salter's March 25, 1992 Plaintiffs Appellate Brief and May 4, 1992 Reply

Brief, filed in the Circuit Court of Appeals for the Ninth Circuit, Case 91-36344, John S. Salter v. U.S.A., Nicholas Brady, Secretary of the Treasury. Mr. Salter's efforts and arguments complement Lighters, albeit their exists some current strain in the relationship due to conflict over handling of evidence.

**SALTER'S RELATED EFFORTS DESERVE REVIEW**

23. This Salter case is regarding the Royal Hawaiian Heritage Jewelry contribution to the "PBS Ruling" described above and in the abovesaid May 31, 1991 Federal Register. This case was related to the May 1,1992 case also filed in Montana, CV92-48-M-CCL, John Stuart Salter v. Nine Federal Grand Juries, The United States of America, Aubrey E. Robinson III, William Barr, Gayle Lau and Jon J. Chinen. Four of the named Federal Grand Juries are the Hawaii Federal Grand Juries. These were fierce battles, fought on nearly identical issues and material as the instant case. The arguments that Mr. Salter elucidates are definitely incorporated herein as if written in full, with only the details of the parties and such being substituted. Mr. Salter's cases discuss of two paradoxical tax returns brought for prosecution by felony confessions.

24. The instant case discusses two paradoxical tax returns brought for prosecution by felony confession. One important confession herein can be found on page 30 of:

Memorandum In Response To Plaintiffs' Memorandum In

Opposition, Dated April 28, 1994, To Defendant Eric Aaron Lighter's Requests, For Reasons Including Opposing Plaintiffs Attempt To Divert The Court's Attention Away From The Facts And Evidence And Supporting Authorities That Are Quite Incriminating To Plaintiffs, Especially Opposing Plaintiff's Attempt To Ignore Procedures Necessary In Dealing With Tax, RICO And Other Felonies, Defendant Eric Aaron Lighter's Demand To Be Indicted If Tax Returns Prepared And Filed Herein And With Examination Division Of Internal Revenue Service by Defendant Lighter Are False Or Frivolous, Particularly Pursuant To 18 USC § 3501, Which Tax Returns Clearly Demonstrate The Criminality Of Plaintiffs, Exhibit "One" Through "Seven", Certificate Of Service, filed May 4, 1994 herein, annexed hereto by reference as though physically attached hereto.

25. These battles of Mr. Salter would have been won if only Mr. Salter had access to the material and evidence in Exhibit "C" hereto, supplemented by:

Eric Aaron Lighter's Memorandum In Opposition To Plaintiffs' Motion To Compel Production of Documents Due To Same Being Plaintiffs' Continued Attempt To Obfuscate The Facts And Failure To Notice Defendants Of Hearing Date Of Said Motion, Exhibits "A" Through "L", Declaration Of Eric Aaron Lighter, Certificate Of

Service, filed June 3, 1994 herein, ("613194 Memo") and annexed by reference as though physically attached hereto.

In this 6/3/93 Memo, page 4 through 9 quotes the:

Memorandum In Support Of Defendant Eric Aaron Lighter's Motion For A New Trial Or, In The Alternative, For Amendment Of Judgement In Order Filed May 19, 1994 Herein, Exhibits "1", "2", "3" And "4", Certificate Of Service, filed May 27, 1994 herein ("5/19/94 Memo"), annexed hereto by reference as though physically attached hereto.

The 5/19/94 Memo connects the exact pattern of fraudulent tax returns of HPW with fraudulent tax returns in other cases.

26. The 5/19/94 Memo connects certain Third-Party Defendants herein with a former, well placed FBI man--Eugene Glenn, now Special Agent In Charge of the Salt Lake City, Utah FBI Office-key to a massive coverup discussed in Exhibit "B" hereto, and vitally related to the instant case and the Third-Party Defendants. However, it is clear that it took years of struggling against intense coverup by certain corrupt officers and agents of the United States before the truth could even be known, let alone now begin to prosecute for justice and equity.

**SALTER ARGUES WELL AGAINST INAPPLICABLE IRS DEFLECTION WEAPON**

27. To recap, Mr. Salter squarely beats the government's arguments attempting to invoke the Anti-Injunction Act, 26 U.S.C. § 7421

(a) and the Anti-Declaratory Judgement Act, **28 U.S.C. § 2201**. Lighter has already incorporated Mr. Salter's arguments herein. However, there are a number of matters to reiterate.

28. First, the U.S. District Court has jurisdiction over tax crimes and tax offenses, which exist here, Drefke, Paul v. U.S. (1983, CA9) 707 F2d 978, Isenhower, John v. U.S. (1985, CA3) 754 F2d 489, Dawes, Donald v. U.S. (1989, CA10) 874 F2d 746, Schmitt, Wilhelm v. U.S. (1986, CA8) 784 F2d 880, Neal, Paul v. U.S. (1985, CA10) 774 F2d 1022, Lussier, Joseph v. U.S. (1991, CA1) 929 F2d 25, McDonald, Richard v. U.S.,11/26/90, CA-9, 1990 US App LEXIS 20602.

**CRIMINAL MATTERS SENIOR TO CIVIL ANTI-INJUNCTION AND ANTI-DECLARATORY JUDGEMENT ACTS**

29. Criminal prosecutions for violations of the internal revenue laws are heard and tried in the United States District Courts under their general jurisdiction over federal crimes, **18 U.S.C. § 3231**, U.S. v Hoover, W. Herbert (1955, DC TX) 139 FSupp 985, Kern, Elain, (1983, CA9) 707 F2d 520 (unpubl'd), U.S. v. Sasscer, John (1982, DC MD) 558 FSupp 33.

**ADMINISTRATIVE REMEDIES EXHAUSTED**

30. The 106,000 pages of highly indexed, hand numbered evidence filed in the Hawaii Bureau of Conveyances over a period of years, including thousands of certified "green" return receipt cards, is certainly a record for exhausting administrative remedies, Purk, Dwight v. IRS, 2/9/90, CA-6, 1990 US App LEXIS 1983 (unpubl'd), Pugia Joseph Sr.

v. IRS, 6/29/90, CA-1, 1990 US App LEXIS 14183 (unpubl'd); see paragraph no. 4 above.

**ACTUAL TAX CONTROVERSY EXISTS**

31. Besides the arguments Salter makes, the plain fact is that there is no doubt an "actual tax controversy" between taxpayer and IRS, a requirement for avoidance of dismissal if there was a suit for declaratory judgement; however such controversy is a tax crime controversy. The argument is over the criminality of the circumstances. There are two very different tax returns, a felony confession and one or more federal order--caused by the IRS, including its massive disagreement with the Congressionally mandated Title 26 of the United States Code, the Internal Revenue Code--stating that there is no wrongdoing in the face of obvious dual application of the law one for the privileged and one for the masses, Joslin, Gary v. U.S. (1987, CA10) 832 F2d 132, MCA, Inc. v. American Broadcasting Cos. (1983, CA9) 715 F2d 475, Wiemerslage, Roland v. U.S. (1986, DC IL) 633 FSupp 718, see abovesaid May 31, 1991 Federal Register. The 10/14/94 Motion itself demonstrates that there is an actual conflict. The conflict is of facts (by Lighter) verses coverup of the two tax return paradox. The conflict is one is one of a government pleading denying the actual existence of Lighter's felony confessions. The conflict is one of actual Misprision of Felony, 18 U.S.C. § 4, in order to protect a privileged few, or the exposure of the process that protects a privileged

few.

32. In no way does the dispute hinge on the avoidance of taxes. "The purpose of the federal tax exception to the Declaratory Judgement Act is to protect the government's ability to assess and collect taxes free from pre-enforcement judicial interference, and to require that disputes be resolved in a suit for refund", State of Cal. by and through Deukmejian v. Regan, 641 F2d 722 (1981), Bob Jones University v. Simon, 416 U.S. 725, 736-37, Flora v. United States, 362 U.S. 145, 164-165 (1960).

33. The same applies to the Anti-Injunction Act, **26 U.S.C. § 7421(a)**. In Enochs v. Williams Packing Co., 370 U.S. 1,7, it states,

> "The manifest purpose of § 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund. In this manner the United States is assured of prompt collection of its lawful revenue. Nevertheless, if it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the Act is inapplicable and, under the Nut Margarine case [Miller v. Standard Nut Margarine Co., 284 U.S. 498], the attempted collection may be enjoined if equity jurisdiction otherwise exists. In such a situation the exaction is merely in "the guise of a tax.
>
> We believe that the question of whether the Government has a chance of ultimately prevailing is to be determined on the basis of the information available to it at the time of suit. Only ff it is then apparent that, under the most liberal view of the law and facts, the United States cannot establish its claim, may the suit for injunction be maintained." See also, U.S. v. American Friends Service Committee, 419 U.S. 7,19 (1974)."

34. Likewise, "The purpose of the federal tax exception to the Declaratory Judgement Act is to protect the government's ability to assess and collect taxes from pre-enforcement judicial interference, and to require

that disputes be resolved in a suit for refund," Coast Engine & Equipment v. Sea Harvester, Inc., 641 F2d 723 (1981). The federal exception to the Declaratory Judgement Act is "at least as broad as the Anti-Injunction Act", Bob Jones University v. Simon, 416 U.S. 725, 736-737. The two exceptions to the Anti-Injunction rule apply: (a) the government in no circumstances could ultimately prevail, and (b) the requisites for equity are met.

35. Lighter seeks no injunction to avoid or delay payment of taxes. **Lighter seeks to pay taxes, not prevent or delay collection**. The Government could never win an argument to avoid collection of taxes or avoid a valid felony confession in order to avoid collection of taxes. That is rightly a threat to the revenue base of the United States, **28 U.S.C. § 1357**. The instant 10/14/94 Motion seeks to, by dismissal, enjoin Lighter from his demand to pay taxes, and present his felony confession of tax crimes. Where in any code can such conduct be allowed in any fashion? Prosecutorial discretion does not go so far as to cover such obvious, prima facie, highly evidenced and actually quite blatant felonies. However, Lighter may have to consider the Governments' actions as permission for a taxpayer to have two highly contradictory tax returns both be correct and unchallengeable. Many other ordinarily impossible paradoxes can also be concluded and legally justified therefrom.

36. The government states, on page eight of the 10/14/94 Motion,

that "the purpose of adding the tax exception to the Declaratory Judgement Act was to make clear that the Act had 'no application' to federal tax controversies," S. Rep. No. 1240, 74th Cong., 1st Sess. at 11 (1939-1 Cum. But. (Pt. 2) 651, 657). The instant case is one of FEDERAL TAX AND OTHER CRIMES CONTROVERSIES. The instant case is, for example, one of laboring to prevent further damage due to a very real threat to the revenue base of the United States. Many crimes have been committed, as noticed herein again, related to this tax return paradox problem that looms as a crime problem not a tax controversy *per se*.

37. Even if Lighter did seek an injunction, it would be for prevention of the continued threat to the revenue base of the United States that has damaged Lighter. On a realistic basis, Lighter could prove that no other adequate remedy will cause irreparable harm pursuant to Lighter being under threat of imprisonment as a political prisoner. Lighter's whistleblowing on the two opposing applications of the supposedly single tax code has obviously stepped on certain toes to the point that it has become important to defend the paradox vigorously, as seen in the 10/14/94 Motion.

38. Lighter does not require an audit in order to prove the dispute, Lambert, Charles v. Com., 41 AFTR 2d 78-1050, the conflict, the paradox, the harm or the violation of law by those protecting the fraudulent tax returns of Hideo/Noah, et al. Lighter has even placed the tax returns that

challenge those of Hideo/Noah, et al. under the jurisdiction of both CID and Examination Division, so certainly Internal Revenue Code sub-jurisdiction differences is no excuse for the IRS.

39. Lighter is not attempting to compel IRS agents to conclude a criminal investigation and to inform Lighter whether prosecution will be recommended, Lubus. Raymond v. Finnegan, 36 AFTR 2d, 75-6057: Lighter concluded the criminal investigation by confessing and then suing the Federal Grand Juries for failure to indict Lighter. The IRS has no authority to indict even if it did do or complete an investigation. There is no recommendation stronger than a felony confession accompanied by one of two tax returns that on their face demonstrate felony activity,let alone be so vastly supported as in this case.

**OTHER STATUTES PERMIT ACTION TO BE BROUGHT**

40. Actions won't be dismissed under the Declaratory Judgment Act if some other statute specifically permits such an action to be brought. For example, an action to quiet title to property subject to a federal tax lien would not be barred by the above act, **26 U.S.C. § 7402(e), 28 U.S.C. § 2410(a)**, Johnson. Norman Est (1988, CA5) 840 F2d 13. Again, in the instant case, statutes sued for include **28 U.S.C. § 1357**, which states:

> Injuries under Federal laws.
> The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property on account of any act done by him, under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any

state.

This is a law so fundamental it protects voting. Certain Phoenix Operation Parties have both personally and professionally damaged Lighter by acts and omissions to act regarding Lighter's demand to pay taxes, hereby demanded again. These Phoenix Operation Parties have both personally and professionally damaged Lighter by acts and omissions to act regarding Lighter's demand to enforce a single Internal Revenue Code application, see Third-Party Complaint.

**LIGHTER'S CIVIL AND CRIMINAL RIGHTS VIOLATED**

41. Lighter's civil rights have been violated pursuant to being burdened with the application of the two paradoxical applications of the Internal Revenue Code as demonstrated by the three groups of two sets of paradoxical tax returns, and in violation of **28 U.S.C. § 1343**, already brought herein under **28 U.S.C. § 1331**. More importantly, however, is that Lighter's criminal rights have been violated by the herein, such as being forced to aid and abet in what the Internal Revenue Code deems to be tax crimes. Lighter has the right and duty to defend the Internal Revenue Code from the issues and matters named herein that threaten the revenue base of the United States; however and unfortunately at risk to Lighter's own person.

**FELONY CONFESSION ILLEGALLY THWARTED**

42. The admissibility of Lighter's felony confessions has been

illegally thwarted by the Operation Phoenix Parties, in violation of 18 U.S.C. § 3501 (d), which states:

> "Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention."

Lighter's felony confessions have been voluntary and from sound mind, Hamilton v. U.S. (1973, CA6 Tenn) 475 F2d 512, U.S. v. Moffett (1975, CA5 TX) 522 F2d 1379, U.S. v. Williams (1980, CA5 La) 616 F2d 759, 5 Fed Rules Evid Serv 1328. Lighter has in effect waived counsel related to confessions inasmuch as the Magistrate Judge Francis I. Yamashita and presiding Judge Harold M. Fong have both ruled that Lighter is being regarded as an attorney, and was sanctioned by order herein as such, U.S. v. Crook (1974, CA3 Pa) 502 F2d 1378, U.S. v. Zink (1980, CA10 Colo) 612 F2d 511.

## JUDGE HEARD FELONY CONFESSION IN OPEN COURT WITHOUT REJECTION

43. On May 16,1994 herein, in open court, Judge Harold M. Fong warned Lighter about the consequences of making felony confessions to the IRS., thus complying with adequacy and propriety of instruction regarding such confession, States v. Fuentes (1977, CA2 NY) 563 F2d 527, U.S. v. Blue Horse (1988, CA8 SD) 856 F2d 1037, U.S. v. Williams (1973, CA8 Neb) 484 F2d 176. Lighter then told the Court that he was confessing to the Judge directly. The Court was obviously satisfied that

the felony confession was voluntary, material and genuine, see page 37 of transcript of May 16,1994 hearing herein. Lighter's confession is applicable and valid in the now factually extant presentations to the Federal Grand Jury as well as to the Department of Justice, U.S. v. DiGilio (1976, CA3 NJ) 538 F2d 972, U.S. v. Rondon (1985, SD NY) 614 FSupp 667. Federal tax returns filed in previous years are not confessions, U.S. v. Drefke (1983, CA9 Mo) 707 F2d 978, but the tax returns with Lighter were filed or filed as amended WITH CONFESSIONS.

**THREE MORE STATUTES VIOLATED**

44. **Title 18 U.S.C. § 2(b), Principals, states:**

> **"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."**

**Title 18 U.S.C. § 3, Accessory After the Fact, states, in part:**

> **"Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact."**

**Title 18 U.S.C. § 4, Misprision of Felony, states:**

> **"Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than thee years, or both."**

These three statutes have been violated. Certainly the permitted voluntary felony confession to the Court, the Department of Justice and to CID

demonstrate this. The felony confessions were permitted in order to protect those who have for some reason been bestowed the rank of the privileged, verses those who are in the "masses" category such as Lighter and others. Surely Plaintiffs and cohorts have been targeted as "privileged" for some reason. Surely Plaintiffs and cohorts are more guilty of these felonies than others.

**SOVEREIGN IMMUNITY EXCEPTIONS APPLY, i.e.. GAGAS RULES**

45. Besides the arguments that Mr. Salter makes, the governments citation of Tashima v. Administrative Office of the United States Courts, 719 F.Supp. 886 (C.D. Calif. 1989) is also misplaced. The exceptions to the sovereign immunity doctrine are "(1) action by officers beyond their statutory powers and (2) even though within the scope of their authority, the [statutory] powers themselves or *the manner in which they are exercised are constitutionally void*" (emphasis in original). The level of unconstitutional and illegal activities as defined above is quite significant, and still ongoing. Attached hereto as the second part of Exhibit "B" is the Affidavit of Eric Aaron Lighter Regarding Auditing Standards, without exhibits, filed February 6, 1992 in the Hawaii USDC, Civil No. 90-00720-ACK, Chee & Markham v. Royal Hawaiian Heritage, et al. This pleading is especially regarding government auditing standards as codified in the General Accounting Office's Government Auditing Standards, Interpretations of Continuing Education and Training

Requirements and Internal Revenue Service's Quality Assurance Rating Guide. This pleading is supported by three affidavits from two Certified Public Accountants regarding the audit work of Lighter. In the instant case, the IRS has no ability to comply with the herein discussed Generally Accepted Government Auditing Standards ("GAGAS") and legitimately take its the position in its 10/14/94 Motion. The intended and written standards IRS must by law comply with are defeated by the 10/14/94 Motion in the face of the events, circumstances and evidence herein.

**EITHER LIGHTER FILED A FRAUDULENT TAX RETURN IN THIS CASE OR HE DIDN'T**

46. Either (1) Lighter filed a fraudulent tax return in this case or (2) Lighter did not file a fraudulent tax return in this case. If Lighter did file a fraudulent tax return then he deserves to be indicted. There is no possibility that this act by Lighter of filing a SECOND tax return for HPW, as its duly authorized (1) tax return preparer for HPW, and (2) provably the CEO and controller of the Board of Directors of HPW, is (a) insignificant, (b) negligent, (c) reckless, (d) in error, (e) frivolous, (e) coerced, (f) without *prima facie* and redundant, high quality evidence, (g) without notice, (h) without adequate *mens rea* (criminal intent, if criminal), or (i) bad faith. If Lighter's filed tax return is honest and accurate, then the tax returns that Lighter filed in this case prove that Plaintiffs filed fraudulent tax returns. The money any Plaintiffs embezzled from HPW is embezzlement income

to Plaintiffs and Hideo, et al.[3], Handbook for Special Agents, Criminal Investigation Intelligence Division, Internal Revenue Service, section 41(11).33, Embezzled Funds and Other Illegally Obtained Income. Note also that Section 41 (11).1 therein states, "The determination of willfulness of a criminalact is the function of the jury under proper instructions from the court [Morissette v. U.S.] {279 F.2 1 (CA-4), 59-2 USTC 9657}. Usually, the jury will be told that direct proof of willful or wrongful intent or knowledge is not necessary; that it is not possible to look into a man's mindto see what went on; that intent can only be determined from all the facts and circumstances; that intent and knowledge may be inferred from various acts [U.S. v. Swidler] {55-1 USTC 9319 (E.D. Pa.), aff'd 220 F 2d 351 (CA-3), 55-1 USTC 9320, cert. denied 346 U.S. 915}".

**ONLY REAL BASIS FOR RICO PROSECUTION POSSIBLE IS THAT LIGHTER INTENTIONALLY FILED FRAUDULENT TAX RETURNS HEREIN**

47. Lighter hereby again stipulates and voluntarily confesses that if the tax returns he filed in this case are fraudulent, that they were intentionally filed fraudulently. Under such a stipulation, Lighter was correct in originally filing said tax return under the jurisdiction of CID. However, Lighter has since removed CID's jurisdiction over said tax returns for reasons, including CID being too understaffed in their tiny office to handle these matters expeditiously. Lighter also transferred jurisdiction of the fifty (50) plus bankers boxes of records from CID over to

[3]See Exhibit "17" of the oriainal Answer of Liohter herein.

Examination Division. Lighter moved jurisdiction of said tax returns over to the Examination Division, as provided for in the related Administrative Procedures Act. Further, Lighter has long known that CID Chief Myron Chang holds some upset about Lighter having successfully investigated the apparently nefarious timeshare adventures of one of his brothers in the infamous WPMK case, which Lighter allowed another party to publish as part of Lighter's tax return material. Lighter apologized to CID Chief Myron Chang for any embarrassment caused by the findings in Lighter's investigation, but apparently there is still a "grudge" being held there.

48. In order for this Court to have jurisdiction over this case regarding RICO allegations, the alleged act must be indictable. Therefore, if the tax returns filed in this case by Lighter were intentionally filed fraudulently, then the requirement for alleged act to be an indictable act is met. That is, in order for this case to be continued to be heard on the basis of RICO allegations, Plaintiffs must also be alleging that Lighter committed indictable acts. Lighter insists that these acts could only be seen summarized in the filing of fraudulent tax returns. Alleged slander of person or title can never be an indictable act. Therefore, the only other significant allegation against Lighter is that of filing a fraudulent tax return.

49. Even so, Plaintiffs would also have to allege the filing of two or more tax returns meet the "pattern" of crime element requirements of the RICO statute, **18 USC § 1961**, et seq. Using said tax returns, however,

probably preclude alleging the continuity element of the RICO requirements. Nevertheless, Plaintiffs have almost nothing else they can utilize in properly asserting federal jurisdiction over the matters claimed in their Complaint. For example, as a gesture of good faith, Lighter released the Notice of Implied or Constructive Trust on the Woo's Waialae Iki property, effective the date of execution, so there is no damage to Woo; nor was any ever intended except as Hideo had instructed, see Exhibit "32" of Reference Exhibit"5" hereto.

**FRAUDULENT RETURN OFTEN NEEDS RETURN PREPARER BELIEVES IS FALSE**

50. In the Handbook for Special Agents, Criminal Investiaation Intelligence Division, section 418.11 and 418.12, it states in part, "A person who willfully makes and subscribes, under penalty of perjury, any return, statement, or other document which he/she does not believe to be true and correct, as to every material matter, commits a criminal offense," see 26 USC § 7206, Fraud and False Statements; note also the related section 18 USC § 7207. "(1) The elements of a criminal violation under this Code section are: (a) Making and subscribing a return, statement or other document under penalty of perjury; (b) Knowledge that it is not true and correct as to every material matter; (3) Willfulness."

51. In Federal Grand Jury Practice, published by the Department of Justice, March 1983, page 5, "The grand jury has been afforded the broadest latitude in conducting its investigations...supervised by the

district court...In a joint tax and narcotics grand jury investigation approval [*for Department of Justice participation*] for the tax investigation must be obtained through the Tax Division...Moreover, approval [*for Department of Justice participation*] for RICO charges, **18 U.S.C. Sections 1961-1968**, must be obtained from the Attorney General or his agent (Organized Crime and Racketeering Section, Criminal Division)."

52. The Government ordinarily has this large burden to prosecute Lighter. However, this burden has been chiefly circumvented and streamlined prosecution made mandatory pursuant to Lighter terminating most investigative procedure. Lighter has made direct felony confession orally in open Court, in writing under penalty of perjury, by suit to the Federal Grand Jury, by bonding the Federal Grand Jury for cost of scrutiny, and by his unwavering commitment to the truth despite continued unwarranted collateral attacks on his credibility in order to attempt to foil Lighter's efforts to expose the coverup. Indeed, Lighter has forthrightly and righteously brought the felonies and confessions before the Judge the very felonies committed in the judges own courtroom, in the case he is presiding over, and voluntarily made with substantial, *prima facie*, material evidence, does indeed by right move this case over to the jurisdiction of the Federal Grand Jury. Certain officers and agents of the United States Government seem to prefer, instead, to defend the dual application of the Internal Revenue Code we see in the instant case(s): one for the

privileged and one for the masses.

53. The record shows this is a case involving the equivalent of seventy (70) forty foot (40') seagoing containers of heavy inventory missing in about four (4) years, which equals about half (1/2) a mile of containers. There are no invoices signed for almost $8 million in transactions between Plaintiffs and cohort Hideo, et al. For example, the record shows that there are:

- forged checks
- a contrived warehouse eviction
- attempted "clean up" of crimes and removal of records via bankruptcy
- overwhelming alter-ego operations between alleged vendor and vendee evidenced by a huge cloud of interchangeable names, addresses, phone numbers, employees, business cards, invoices, statements, tax return documents, checks, etc.
- Twilight Zone computer run billings
- fraudulent police report and/or bribery/coercion/blackmail/secret deal/other to withdraw true police report charges
- double books to induce liquor sales, etc., Fedway v. U.S., 976 F2d 1416 (D.C.Cir. 1992)
- checks to HPW missing due to being sent to Plaintiffs post office box despite protest

- fraudulent tax returns
- significant misrepresentations to Certified Public Accountant, who made disclaimer on same
- contriving evidence
- desperate perjury despite prima facie evidence to the contrary
- more

54. In other words, there is no possibility that Plaintiffs and cohorts have no idea what happened to the some $1.5 million missing from HPW, the same $1.5 million that Lighter (a) claims is missing at risk of a long prison sentence, (b) is being "set up" to take the blame for those guilty of causing same and coverup of same, (c) is being blamed for a like figure for "interference" that is truly just honest whistleblowing, especially in order to avoid Plaintiffs and cohorts from continuing to "set up" Lighter to take the blame for their torts and other wrongdoing wisely brought before the Federal Grand Juries, see Exhibit "A" hereto. That is, Plaintiffs and cohorts knew or should have known that the named fraudulent tax returns they filed or caused to be filed were based upon their financial relationship with HPW, and were fraudulent when they filed them. Lighter and Plaintiffs/cohorts each know approximately the same financial facts, but with two very different results, i.e. tax returns. IT IS VIRTUALLY IMPOSSIBLE THAT AT LEAST ONE PARTY IS NOT LYING.

## WHAT THE CASE IS REALLY ABOUT

55. This is a case about Plaintiffs and cohorts in the two related cases: (a) complaining about the whisleblowing on matters and parties who cohorts asked Lighter to investigate but fell into disfavor upon Lighter's results revealing too much money missing and how it is missing, (b) cohorts agreeing that debts are not due, and agreeing they are due, but no collection effort begin in some 1 1/2 years, and even if said cohorts continue to stipulate said debts are due, such debts are so large as to prevent said cohorts from keeping any property involved (supposedly an important, although defeated, issue in the case similar to this case, USDC Civil No. 93-0914-ACK), and (c) use of an attorney by cohorts with an already proven to be radically conflicted out agenda, including representing a richer client against and to the detriment of cohort clients. Finally, neither Plaintiffs nor cohorts have formally asked for anything from Lighter that Lighter has not provided when able. Lighter has no idea other than the above, and any secret agreement between Plaintiffs and cohorts, as to why Lighter is still being sued by either or both groups who are in alliance really just a single group determined to coverup their torts and other wrongdoing. The Government's role is for some reason that of protecting and promoting the dual application of the law: one for the privileged and one for the masses.

56. Thus, in the event that Plaintiffs and cohorts get to "get away

with" their crimes via being protected by a few select but corrupt officers and agents of the United States of American, and no one will bring honest justice under any circumstances, then this case should amply confirm the new ratification of interpretation of the Internal Revenue Code that allows crooks to "get away" with such odious practices. Everyone else in America by right should also be able to apply this newly ratified concept, merely by invoking a position of also being an elitist, and separate from the application of the law as foisted upon the masses.

**THE RECORD IS PART OF THE TAX RETURN**

57. Further, the entire record is therefore properly part of and annexed to the tax return by Lighter. Title **26 U.S.C. § 6103(b)(1)** discusses how a "return" is any return, estimated tax declaration, information return or refund claim which is filed by, on behalf of, or with respect to any party. A return also includes any amendment or supplement to the return, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return. **26 U.S.C. § 6103(b)(2)(A) and (B)** discuss how a tax return, including for a corporation, needs "return information", which is, in part, a taxpayer's identity, the nature, source or amount of its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments and tax payments, whether the return is, was or will be examined or investigated, or any other data with respect to a return or

determination of the existence of the liability of any party for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, plus any part of any written determination or any background file document relating to such written documentation, which is not open for public inspection, Church of Scientology v. IRS, 569 FSupp 1165 (9th Cir. 1986).

**FORMALITY OF PRESENTATION BY LIGHTER IS HIGHEST AVAILABLE**

58. Thus, and overall, the presentation made by Lighter herein, is at the highest level of formality and comprehensiveness available in the land. Yet certain officers and agents of our honest Government seek to hide from the facts and their paradox of criminality displayed by the two sets of opposing returns, in order to further the cause of protection and promotion of dual application of the law: one for the privileged and one for the masses; where the latter is a category which these parties find useful or convenient to place Lighter in.

**RELATED, LIGHTER IS INVOLVED WITH A BATCH OF UP TO 25,000 TRUSTS**

59. Lighter's involvement with a batch of trusts totalling up to 25,000 altogether is relevant herein. As the Honolulu Office of District Counsel for the IRS, the Honolulu Office of the U.S. Attorney, and the IRS CID know, Lighter has already intervened for the tax return for all these trusts in demonstration of the importance herein, BEFORE any or any further prosecution of the known batch of some 25,000 trusts. It is just as

vital that these trusts as it is for HPW to cease to be treated in the "masses" category of the dual application of the Internal Revenue Code.

60. Every argument the government has made in its 11/14/94 Motion has been or easily could be further defeated. These arguments have been or will be addressed within the context of the 25,000 as well. Lighter makes this demand herein and simultaneously with the U.S. House Oversight Committee, as supplement to the already active case there and with the Department of Treasury Office of Inspector General, Investigation Division, Washington, D.C.

**CONCLUSION**

61. In conclusion, it is evident, clear and convincing that the government can surely not defend its arguments in its 10/14/94 Motion. Again and for one thing, Lighter seeks to defend the Internal Revenue Code and the revenue base of the United States, not defeat it. The 10/14/94 Motion is aimed at those who would attempt to defeat the Internal Revenue Code and the laws of our land. Thus, the 10/14/94 Motion is aimed at parties that do not include Lighter and the 25,000 trusts. For all the above, including the exhibits annexed hereto by attachment and by reference, the government's 10/14/94 Motion should be denied.

62. However, in view of the determination of the instant select officers and agents of the government in defending the dual application of

the Internal Revenue Code, and under any circumstances, Lighter has no choice but to withdraw his Third-Party Complaint against them and further seek a higher tribunal: the Federal Grand Jury in one or more states. Based upon the above, Lighter will no doubt have to continue to sue the Hawaii Federal Grand Juries as well as seek audience with Federal Grand Juries in other, more neutral and less conflicted out venues. Lighter notes well that the Federal Grand Juries in Hawaii have already failed and refused to answer the complaint against them, as noted in the filed for default dated August 24,1994 and August 26,1994 herein. The problems of the Court's refusal to follow Rule 5(a) of the Federal Rules of Civil Procedure will have to be addressed later.

**WITHDRAWAL OF THIRD-PARTY COMPLAINT AS TO CERTAIN THIRD-PARTY DEFENDANTS**

63. Pursuant to the above, including the exhibits annexed hereto by attachment and reference, Lighter hereby withdraws without prejudice the Third-Party Complaint made against Third-Party Defendants Robert Ah Nee, Debra Nolan, Maurice Shimonishi, Henry Kojima and Leslie Osborne, Jr. This withdrawal is made pursuant to Rule 41 of the Federal Rules of Civil Procedure.

Dated, Honolulu, Hawaii, November 21, 1994.

_____/S/_____
ERIC AARON LIGHTER, Individually and dba WELLS FARGO PROTECTIVE ALARM SERVICE CO.
*Sui Juris* and *In Propria Persona*

[Exhibits and Certificate of Service omitted in reprinting]

[FILED: *DEC 20, 1994*]

[Heading omitted in reprinting]

**ORDER DISMISSING THIRD PARTY COMPLAINT**

On December 5, 1994, the court heard third party defendants Robert Ah Ne, Debra Nolan, Maurice Shimonishi, Henry Kojima, and Leslie Osborne, Jr.'s ("defendants") motion to dismiss third party plaintiff Eric Aaron Lighter's third party complaint. Lighter, dba Wells Fargo Protective Alarm Service, has moved for voluntary dismissal under Rule 41(c) of the Federal Rules of Civil Procedure. As no responsive pleading has been served, the court GRANTS Lighter's motion to dismiss without prejudice.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, DEC 20, 1994.

/S/
UNITED STATES DISTRICT JUDGE

HAWAII-PACIFIC WHOLESALERS, INC., ET AL. VS. ERIC AARON LIGHTER, ET AL.; CIV. NO. 94-00179 HMF; ORDER DISMISSING THIRD PARTY COMPLAINT

[Heading, USDC Civil No. 94-00179, omitted in reprinting]

**TRANSCRIPT OF HEARING**

Monday, December 5, 1994, at 11:21 a.m., Honolulu, Hawaii

BEFORE: THE HONORABLE HAROLD M. FONG United States District Judge District of Hawaii

STEPHEN B. PLATT, CSR, RPR, CM, CRR, Official U.S. District Court Reporter, District of Hawaii

APPEARANCES:

RON GRANT, ESQ., Attorney for the Plaintiffs

MICHAEL CHUN, ESQ. (Chief of Civil Division, Honolulu Office of the United States Attorney)

PRESTON A. GIMA, ESQ., Attorney for the Defendants

ERIC AARON LIGHTER, Defendant, Pro Se

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THE CLERK: Civil Number 94-179, Hawaii-Pacific Wholesalers, Incorporated, and others, versus Eric Aaron Lighter, and others. This case is called for hearing on third-party defendant's motion to dismiss.

MR. GRANT: Good morning, Your Honor. Ron Grant on behalf of plaintiffs.

MR. CHUN: Good morning, Your Honor. Michael Chun on behalf of various federal defendants.

MR. LIGHTER: Good morning, Your Honor. Eric Lighter on behalf of myself.

MR. GIMA: Good morning, Your Honor. Preston Gima representing Nancy LaRosa and various trusts of the corporations.

THE COURT: All right, it's my understanding that this motion concerns

those defendants who are associated with the government, the IRS personnel in this case.

MR. CHUN: Your Honor, evidently Mr. Lighter, subsequent to our filing our motion to dismiss, filed an opposition and a withdrawal -- a dismissal, I suppose, against the various federal defendants. We didn't get it, and we didn't see it, but I think that since he did that, I think it's appropriate to go ahead and dismiss the federal defendants. [*It was delivered, and it was also in the title of the pleading, and therefore on the docket sheet as well, CR No. 168*] There was something in our brief, and it's not real clear to us, the tax division, whoever, about the federal grand juries. The question is, we don't even know whether we are authorized to represent the federal grand juries. We don't know what kind of entities they are, and -

THE COURT: Well, you have always heard that the grand jury was a rubber stamp of the United States Attorney, so if you represent them that might lend credence to that you might want to leave that alone somehow to figure out what to do with that cause of action.

MR. CHUN: Actually, I think the grand jury is probably more a function of the court than the U.S. Attorney. I think they are part of the court system, so -

THE COURT: The grand jury is convened by the court when there is a need to do so. The United States Attorney writes a letter to the court and says, we need some grand jurors to consider a matter that we would present. The court then convenes the grand jury, then kind of chases you

out of the courtroom because we don't really want you to influence our selection of the grand jury. But once we impanel the grand jury, then you, as an entity, may bring cases before the grand jury. So **I don't think you can really represent the grand jury** -- not as far as I know (*emphasis added*).

MR. CHUN: Okay, I think that's where we stand. I think the court has to request that we represent the grand jury, if necessary.

THE COURT: I guess I could, *sua sponte*, grant whatever relief I thought might be appropriate in a case of this nature.

MR. CHUN: So, in that case, I have nothing further to add -

THE COURT: Now, technically, you said that Mr. Lighter then wishes to withdraw. What is your position for today's hearing?

MR. CHUN: That our motion be granted.

THE COURT: All right. Because there is still a motion?

MR. CHUN: That's correct.

THE COURT: And if I grant the motion then I grant it with prejudice. I think what Mr. Lighter wants is without prejudice, and I guess he may have done-

MR. CHUN: I think it should be dismissed with prejudice. I can't tell what the procedure is at this point -

THE COURT: All right. Let me hear from Mr. Lighter, or anyone else. Mr. Lighter-

MR. LIGHTER: Yes, sir?

THE COURT: – I guess if you moved on your papers before the issue was joined by either answering, or by their motion, I would grant leave of you to do whatever you want with your -

MR. LIGHTER: That's correct, if their motion -

THE COURT: But they joined it, so that's the problem. The issue is now before me, a motion to dismiss. Unless that motion is withdrawn in any way, I am prepared to answer that motion, either by granting the motion or denying the motion.

MR. LIGHTER: Well, Your Honor, their motion was not a motion for summary judgment. And I believe I have – that is the reason I -

THE COURT: The motion is a motion to dismiss.

MR. LIGHTER: But, according to the rules, unless it's a motion for a summary judgment, I have a right to withdraw before an answer – or a motion for summary judgment -

THE COURT: Well, I'm not going to let you do it, because it's meritorious what they say, as far as their motion is concerned. They are entitled to have it considered, and once it's considered by this court then you cannot raise it in this case ever again, I think, unless the Ninth Circuit reverses me in some way. I'm prepared to grant your motion for the reasons as suggested.

MR. LIGHTER: These parties are defaulted, didn't answer, and I would

ask you to -- let me just find the rule (perusing documents)Rule 41.

THE COURT: And what is that?

MR. LIGHTER: Under Rule 41 I have the right to withdraw my complaint unless they file an answer, or file a motion for summary judgment. That's all the rule says. And I did deliver this document to them in person, but it must have gotten mixed up. I'll promise to deliver a copy -- they don't really even want a copy -

THE COURT: All right.

MR. LIGHTER: And, as to the grand jury, the issue of presentment, in the Fifth Amendment of the Constitution, is a power of the country for the power of indictment by the grand jury which is the power of the grand jury to, on its own merit, not at the behest of the judge or the prosecutor, to issue an indictment. So that's -

THE COURT: Who is going to present the matter to the grand jury?

MR. LIGHTER: No, no, no, no, the word is "presentment" in the Fifth Amendment. That's the power that the grand jury has to issue an indictment, not at the behest of the government -- the prosecution or the judge, on their own power.

THE COURT: And who is going to ask the grand jury to do so?

MR. LIGHTER: Well, they could do it on their own. They don't need anyone to ask them to move on an indictment, based on the Fifth Amendment.

THE COURT: You're right, they can do so on their own, but what would cause them to do so?

MR. LIGHTER: Receiving information, including pursuant to what one court has ruled is a proper reporting, via a lawsuit, a complaint, which is what I filed, to make a proper reporting to the grand jury, requesting them that they move on their own power, independent of a court or the government.

THE COURT: It may or may not be the case, but certainly I do not consider the matter against the grand jury to be before this court for adjudication -

MR. LIGHTER: I see.

THE COURT: – because the United States Attorney, at this point, by its motion, does not represent the grand jury.

MR. LIGHTER: I see.

THE COURT: All right.

MR. LIGHTER: I would again request a dismissal without prejudice pursuant to Rule 41.

THE COURT: All right. Mr. Chun?

MR. CHUN: Your Honor, can I have a second to actually look at what it says?

MR. GRANT: (Tendering documents to counsel.)

MR. CHUN: (Perusing documents.)

MR. GRANT: I appear to be the only party that got a copy of the opposition, so that's what I'm loaning to Mr. Chun.

MR. CHUN: (Perusing documents.)

Your Honor, I can't respond to it because I'm not ready to admit whether or not Rule 41 allows them to do that ahead of time. But he, in fact, did appear to file it, and the answer is, I don't know what the answer is.

THE COURT: Well, you leave the court to make one of two decisions, I guess: One is to grant your motion to dismiss for failure to state a claim, or any other reason which you would otherwise be entitled to, but, if I do so, I would do so over Mr. Lighter's third-party action against these parties, his right to withdraw the same and dismiss without prejudice. He cites to Rule 41. Rule 41 does, in fact, put it in terms of a motion for summary judgment. I guess I could look at this as a motion for summary judgment, as well as a motion to dismiss. I don't know that the court is quite aware of the answer. itself it only being told on the 26th Page of a 26-page opposition [*it was also in the title of the pleading, and therefore on the docket sheet as well, CR No. 168*], with the court wondering what the first pages are all about, and only on the last page there appears to be a request, or something, on the part of Mr. Lighter, to withdraw the complaint against the government defendants. That's the issue that I have at the present time. My inclination, of course, is to grant the motion to dismiss, if I can do so.

MR. CHUN: Your Honor, we would like you to do that, also; but, on the other hand, I'm not sure that Mr. Lighter is -- we don't want to have any error here, if possible, and might I suggest that, possibly, give us a week to look into this and maybe supplemental briefing, if necessary?

THE COURT: All right.

MR. CHUN: We will decide one way or the other, rather than having a motion that could possibly -

THE COURT: All right -

MR. CHUN: -- I say, Your Honor, "possibly" be reversible.

THE COURT: Okay.

Does anybody else have a position to take?

Mr. Grant?

MR. GRANT: I would love to see this dismissed with prejudice, but I share in Mr. Chun's concern that it not be reversible error and we waste a lot of time with Mr. Lighter -

THE COURT: It's dismissal with prejudice. There's no way in which you can bring a lawsuit against the district director, and try to get the district director involved in the civil action. I guess this is what Mr. Lighter is trying to do, is trying to say, I have gone into their books and it looks like there's some impropriety, and I want to bring it to your attention, and I want you to do something about it, and I want the grand jury to do something about it. You can refer the matter to the IRS, but you cannot bring them in a

lawsuit because, to bring them in a lawsuit, you have to bring action, take action to compel something, either injunctive relief, either in an affirmative injunctive relief, or get other declaratory judgment – which requires that you sue the government, and you can't sue the government, they haven't waived their immunity. Yes?

MR. LIGHTER: Your Honor, the Anti-injunction Act, and the Anti-declaratory Judgment Act both have exceptions, which I think apply in this case. Furthermore, my complaint against the parties is not a frivolous or unmeritorious complaint. It includes a threat to the revenue base of America, 18 U.S.C., 1357 -

THE COURT: What standing do you have to bring it on behalf of the people of America?

MR. LIGHTER: Anyone who is damaged, defending the revenue base of America, has standing, 28 U.S.C. 1357. And I have been trying to defend the revenue base of America based on that there's – my confessions, and my tax return, I can't seem to get beyond the two applications of the tax law. Two applications of the law, one for the privileged, one for the masses like me, somehow the laws apply differently to me. The administration of justice is different from me. The issue of two tax returns is simply to make the matter obvious. The issue of the confession is simply to make the matter obvious. It's true that a separation of power and the IRS can prosecute any way it wishes, but it's hard to - there have been

rulings in the past, and there have been some rulings in this case, where I allege that the law is being applied differently to me. And I have done everything I can to demonstrate my good faith, and the meritorious facts, and in my hard work, and I believe there's a lot of prejudice against me to the point where there's still two tax returns, there's still my felony confession. I had to sue the grand jury just to make a proper reporting. Even though told by Assistant U.S. Attorney Leslie Osborne that he took it to the grand jury, I don't think he did. I'm getting the run-around, and all I'm trying to do is the proper reporting that I'm duty-bound to do and, as a matter of fact, I'm quite liable in the process -- my second set of tax returns...It isn't an unrisky situation. So I am trying real hard to get one application of the law. So that's what my case is about. Thank you.

THE COURT: Well, you are a very unique person, Mr. Lighter. I have never heard of anybody going to the IRS to try to get themselves in trouble. Everybody is running away from the IRS to avoid them finding out trouble on their part there, so I guess they start off with the basic premise, nobody can believe what you are doing, let alone the IRS, and that's the problem.

MR. LIGHTER: I am innocent. I am a whistle blower, and I've got set up to be blamed for other people's wrongs. How do I get out of the setup?

THE COURT: The government is not accusing you of anything, so when you say "I'm innocent," what you are doing is, you are trying to get other

people in trouble.

MR. LIGHTER: On the contrary, his office at this moment is suing me for things that I have discovered about his office, so I do have a problem here.

MR. GRANT: Your Honor, very briefly, I think that one of the motions that's been set for this court on the 19th of January, and that is the issue of indebtedness, will once and for all resolve Mr. Lighter's claims about having found debts; there were none. Found bad documents, there were none. We will resolve that once and for all -

THE COURT: I can't prejudge that.

MR. GRANT: Before the court today Mr. Lighter is not only trying to sue the federal government, he is trying to put himself in the shoes of the IRS Commissioner, U.S. Attorney's Office, and do their job for them.

THE COURT: Because he claims he is a whistle blower; in other words, he got into the company, he checked their books, and he says there's some irregularity, I want to bring it to somebody's attention. Now, I don't know whether that's being very gratuitous, or very magnanimous, but certainly -- he's not going to put himself in jail, but he would like to put an awful lot of other people in jail for alleged wrongdoing that he says he discovered, but he can't get the attention of, I think, the right officers or officials.

MR. LIGHTER: Your Honor, that's not really my goal. My goal is, I got set

up to be blamed for other people's wrongs and, in the process, had to do these extreme measures to try to extricate myself from even being a whistle blower.

THE COURT: Mr. Lighter, have you ever thought of trying to settle? See what you could do to try to extricate yourself -

MR. LIGHTER: I would love to. We've got to give our confidential settlement conference statements today before Magistrate Judge Yamashita.

THE COURT: Okay.

MR. GRANT: Your Honor, I don't want to argue the rest of the merits of this case; that's not what's here, but I think that the court and Mr. Chun are correct; the claims he's making he doesn't have jurisdiction to make. He is suing the United States Government, and he can't do that, and I think you should grant the motion.

THE COURT: I am prepared to grant it, if I have the authority to do so, but I think Mr. Lighter – he always catches somebody right on that point there it does say what it says; it says "summary judgment". There must be some case authority that makes summary judgment and motions to dismiss applicable, as well. If it is then I'm granting the motion. No waiver of sovereign immunity, and for whatever other reasons have been argued here. I don't know how this case can ever come up again. So let me take it under advisement. Let me give – the government wants one week -

MR. CHUN: One week.

THE COURT: – to file points of authority -

MR. CHUN: Just on that one issue, if -

THE COURT: – to allow the government to bring this motion in conjunction with Mr. Lighter's request to dismiss without prejudice, or to withdraw the lawsuit against these defendants

MR. CHUN: We may find he's right, too, but – I don't know.

MR. LIGHTER: Your Honor, one last thing is, I would just like to reiterate that my objection to their motion is sound, and there are exceptions to being able to sue the government.

THE COURT: Oh, no question about that.

MR. LIGHTER: Okay. Thank you, Your Honor.

THE COURT: But they cited some rather convincing reasons – I didn't say you couldn't sue the government. I said in this instance, and for this type of relief that you are seeking, to bring either affirmative injunctions, or to seek declaratory action in a tax-related matter, they are saying those are the things that are not susceptible of the kind of action that you are seeking.

MR. LIGHTER: But they are wrong. There are exceptions even to that.

THE COURT: Where do you say they are wrong? Because we were trying to read your first 25 pages and it doesn't make sense, Mr. Lighter. It's very difficult to follow your reasoning. Did you file an opposition?

MR. LIGHTER: That is my opposition, and I go case and apply the exceptions to the by case, cite by cite, Anti-injunction Act, and the Anti-declaratory Judgment Act. There are exceptions -

THE COURT: That is very convoluted.

MR. LIGHTER: -- in tax cases.

THE COURT: That's very difficult to follow.

MR. LIGHTER: There's only certain exceptions, but I say those apply; at least, that's my argument.

THE COURT: Okay.

MR. LIGHTER: I tried very hard to make it clear.

THE COURT: It's under advisement, and the court will issue a written decision once it receives the government's opposition next week. Okay, court will be in recess.

THE BAILIFF: All rise.

(The hearing in the above-entitled cause was concluded at 11:42 a.m.)

## DECLARATION OF LORRIN CUNNINGHAM

I, LORRIN CUNNINGHAM, state under penalty of perjury pursuant to 28 U.S.C., Section 1746(1), the following:

I signed an affidavit this day, copy attached, regarding the FIVE THOUSAND AND NO/100 DOLLARS ($5,000.00) cashier's check I purchased this day from First Hawaiian Bank, No. 4369483 8. I want to add the following as part of my sworn testimony:

I purchased said cashier's check soley at my own liability and on my on free choice. No one assisted me in funds for the purchase of said cashier's check in any way. In fact, the idea of said bond is my own idea after reviewing, at the suggestion of a friend without explaination, the Petition, etc. filed in the United States Grand Jury for the District of Hawaii as Misc. Case No. 94-00115DAE, beginning Spetember 23,1994.

The purpose of said cashier's check is stated in my affidavit dated this day, attached hereto.

I have given the original of said check to my father, Robert Cunningham, 5808 Haleola Street, Honolulu, Hawaii 96821, Telephone No. (808) 373-3987, to hold until my tender offer to the Clerk of the Court, of the United States District Court for the District of Hawaii, has been approved or otherwise accepted by said Clerk of the Court. Said Robert B. Cunningham is my attorney-in-fact, and a copy of the General Power of Attorney is attached hereto.

For my constitutionally protected actions described herein, I

sincerely hope that no retaliation is made against me, my family or associates.

DATED: Honolulu, Hawaii, February 13,1995.

/S/
LORRIN CUNNINGHAM

[General Power of Attorney omitted in reprinting]



A00200

## AFFIDAVIT OF LORRIN CUNNINGHAM

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

I, LORRIN CUNNINGHAM, being duly sworn on oath, deposes and says:

1. That I purchased a FIVE THOUSAND AND NO/100 DOLLARS ($5,000.00) cashier's check this day from First Hawaiian Bank, No. 4369483 8, a true and accurate copy is attached hereto as Exhibit "A".

2. I purchased said cashier's check on behalf of Constitution Coalition, National Legal and Political Lobby Group, and is payable to the U.S. District Court for the District of Hawaii.

3. I will make a tender offer of said cashier's check to the Clerk of the Court for United States District Court for the District of Hawaii.

4. The beneficiaries of this Cash Bond are as follows:

a. All of the Federal Grand Juries in Hawaii;

b. All of the Federal Grand Juries in District of Columbia;

c. The San Francisco, California Federal Grand Jury in Cr. 93 0592VRW.

5. The purpose of said cashier's check is to cover cost of scrutiny in matters. These matters include those noted in Document No. 94-003954, *et seq.*, filed in the Bureau of Conveyances for the State of Hawaii, and various cases, especially tax returns at filed therein, including:

a. U.S. District Court for the District of Hawaii cases:

Cr.93-854-04 ACK, USDC Misc.94-115-DAE, Civ. Nos.93-914-ACK, 94-179-HMF, 90- 1466-ACK;

b. U.S. Bankruptcy Court for the District of Hawaii case Bk. No. 87-386;

c. U.S. District Court for the District of Central California, Cr. 93 0592VRW.

Further Affiant sayeth naught.

DATED: Honolulu, Hawaii, February 13,1995.

/S/
LORRIN CUNNINGHAM

[Jurat]

[Exhibit "A", copy of cashier's check, omitted in reprinting]

[FILED: *JAN 3, 1995*, with Lighter Counter Motion ]
[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**AFFIDAVIT OF ERIC AARON LIGHTER, RE: ACTUAL DEBT ACCOUNTING OF HPW, INC., EXHIBITS "CA"-"CC"**

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

I, ERIC AARON LIGHTER, upon being first duly sworn under oath, depo[illegible]s and says that, to the best of my knowledge:

ERIC AARON LIGHTER, individually and dba WELLS FARGO PROTECTIVE ALARM SERVICE CO., (together "**Lighter**") makes this affidavit in support of the hereto annexed counter motion ("**Counter Motion**") against Plaintiffs' Motion For Summary Judgement Re Indebtedness Of Defendant HPW, Inc. To Plaintiffs And Expungement of Notices of Implied Or Constructive Trust, filed November 29, 1994 ("**Plaintiffs' Motion**").

2. There are really four main "players" in the drama herein and the case very similar to this case, Hawaii USDC Civil No. 93-00914-ACK ("**Civ. 93-914**"), which similar case is now approached together with this case for settlement purposes: Noah Woo ("**Noah**"), Hideo Kobayashi ("**Hideo**"), his wife Beatrice Kobayashi ("**Bea**"), Lighter and Nancy LeRosa ("**LeRosa**"). Lighter hereby employs the five well exhibited pleadings, annexed hereto by reference as EXH.1-EXH.5, described in full in paragraph ("par") 2 of the Counter Motion. The firm whose accounting is at issue is HPW, Inc. ("**HPW**"), whose tax returns, which use an accrual accounting system with a cost inventory method. The LIFO system, last-in-first-out, is rejected. This means that, regardless of cost valuation, the first moneys pay the first bills. Noah could not have carried the old debts on the books, created new debts, and then pay off the newer debts first. Even if some later debts were due, the earlier ones were extinguished and

all traces of debt arising out the October 16, 1989 Sales and Assets Purchase Agreement ("**10/16/89 PASA**") were removed, and therefor any discussion as to possible restriction on the HPW stock.

3. **Exhibit "CA"** hereto begins with the October 29, 1993 signed and filed by Lighter tax returns for HPW for the period October 1, 1989 through June 30, 1993, which amends the included August 14, 1993 signed and filed by Lighter tax return for HPW for the period October 1, 1992 through June 30, 1993. This August 14, 1993 tax return shows that HPW was actually quite profitable, based primarily on cancelled checks and bank statements, having a taxable income of $142,426 during just a nine (9) month period. However, Lighter was required by the record to file the October 29, 1993 tax return in order to take into account the massive embezzlement and other violations of the Internal Revenue Code and other laws. Nevertheless, the realistic projected annual taxable income for HPW for the period of October 1, 1992 through September 30, 1993 is thus $189,901 [*Lighter has unsuccessfully demanded to pay taxes*].

a. Other exhibits in this section include some of Lighter's interaction with the Internal Revenue Service ("**IRS**"). Included is the March 24, 1994 letter from the Department of Justice ("**DOJ**") notifying Lighter that the matters herein were placed before a sitting Federal Grand Jury in Hawaii. Due to that particular DOJ officer being of questionable conduct said Grand Jury was sued herein as Third-Party Defendants in order to make sure the matters herein have been brought before proper authorities. Lighter is a whistleblower who has done more than can reasonably be expected in bring the matters herein before the proper authorities, and thus comply with the letter and intent of the law thereby.

b. These tax returns filed by Lighter should be compared to those filed by Hideo with the assistance of Noah and Tony Lee, Third-Party

Defendant in Civ. No. 94-914, see **Exhibit "BB"** of the Affidavit of Eric Aaron Lighter, Re: Affidavits of Hideo Kobayashi and Noah Woo, Exhibits "BA"-"BF" (**"AFF. ONE"**).

4. HPW Was Actually Quite Profitable. To reiterate, despite the false HPW tax returns, **Exhibit "BB" of AFF. ONE**, filed by Hideo and Noah, **Exhibit "CA"** hereto shows HPW made a taxable profit of at least $142,426 in only nine (9) months between October 1, 1992 and June 30, 1993, based primarily on cancelled checks and bank statements, statements being included as part of said return and **Exhibit "CA"** hereto.

a. Lighter was requested and duly authorized to prepare, sign and file the HPW tax returns [*Ex."3","7","9"&"13" of EXH.1*]. However, Lighter was required by the record to file the October 29, 1994 HPW tax return--for the period October 1, 1993 through June 30, 1993, which return amended the August 14, 1993 Lighter filed HPW tax return for the period October 1, 1992 through June 30, 1993, both at **Exhibit "CA"** hereto--in order to take into account the massive embezzlement and other violations of the Internal Revenue Code and other laws. Plaintiffs took all or most of the money by cashing checks alleged to be owed to them and by non-delivery of inventory billed by unsigned invoices. Plaintiffs used their iron control over HPW to in order continue to maintain further control over HPW after the first fictitious but alleged default by HPW back in 1990.

b. The Lighter filed tax returns stand in clear opposition to (a) par. 8 of the 8/5/94 Hideo Affidavit, (b) par. 5 of the 7/14/94 Hideo Affidavit, (c) par. 2 of the 11/29/94 Noah Affidavit, and (d) par. 4 of the 7/14/94 Noah Affidavit. HPW has actually been quite profitable for some four years. The alleged HPW losses are false. The alleged HPW indebtedness to Plaintiffs is false. The original capital, at least $75,000 in additional loans from friends of the Kobyashis, and the profits are

missing. Lighter could not possibly have taken the money. The problem arose the first year of operation, and that is why the fraud audit concentrates on the first year of operation, see **AFF. ONE**.

c. The problem arose the first year of operations, and that is why the fraud audit concentrates on the first year of operations. The inventory purportedly sold to HPW that exceeded sales, an amount of approximately $500,000 at cost, could not possibly have been actually sold to HPW. Naturally there are no signed invoices for such alleged inventory sales. The ending inventory for four years shows no such delivery, and in fact shows the inventory to be rather low. The sales were not affected, and neither was the cash. The fraud audit shows that every single month of the first year had the amount of expenditures for inventory closely equal the cost of inventory that left the warehouse. The problems of HPW arise from it being looted, and not by Lighter. The looting occurred before Lighter arrived into the HPW drama herein.

d. Plaintiffs provided a deceptive cloud cover by creating a literal flurry of transfers back and forth between Plaintiffs and HPW, absolutely in contradiction to any notion of arm's length transacting.

e. The bank statements attached to the abovesaid August 14, 1993 HPW tax return filed by Lighter show a consistent series of non-sufficient funds in the HPW account, **Exhibit "CA"** hereto, despite the firm being quite profitable. This demonstrates:

(1) that Lighter could not possibly be responsible for HPW's purported financial problems, and

(2) the importance such matters as (a) the long continued practice of Hideo giving Noah blank HPW checks to fill out [*Ex."6" of EXH.5*], (b) Noah continually forging and otherwise illegally altering HPW checks, **Exhibit "BF" of AFF. ONE** hereto,

(c) the constant commingling of Plaintiff and HPW monies[1], (d) using the same computers for accounting of both HPW and Plaintiffs, **Exhibit "DE" of AFF. THREE**, and (e) letting this kind of control by Plaintiffs go unchecked, whether per coercion or otherwise, to the point of using HPW to illegally sell and deliver liquor without a license.[2]

5. **Exhibit "BD" of AFF. ONE** shows that Noah made a taxable income of $148,196 in 1987, and $67,967.82 from food operations alone in the first six months of his fiscal year in 1988 (April 1988 through October 1988, or a projected $135,935 for 1988; and thus an estimated annual income averaged between the two years of $142,066). Yet with Noah in control after the purported "sale" to Hideo, the virtually identical operations lose $393,129 without counting 10/16/89 PASA amortization ($659,729 less $266,600).

6. Add to this the alleged accounts payable of $487,461, nearly every bit to Noah, and you end up with a total loss for the first year of over $880,000 caused by Noah. Compare the Noah caused $880,000 loss to the normal profit of about $140,000, and you can see that Noah caused a million dollar loss difference to the first year's income. The Kobayashis` paid over $500,000 in cash[3] for the privilege of this million dollar drain. The inventory "bill" never went away, which is impossible if half a million dollars of inventory actually arrived pursuant to the never signed invoices, was sold, and yet the operations were the same as Noah had conducted

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1 Exhibit "DD" of Affidavit of Eric Aaron Lighter, Re: Hideo Kobayashi, et al. And Noah Woo, et al. Being Alter Egos To HPW, Inc., Exhibits "DA"-"DE" ("AFF. THREE").

2 Plaintiffs pleaded guilty for such actions in the Liquor Commission of Honolulu, LCV 93-637.

3 This is the 10/16/89 PASA agreement initial $300,000 sum paid, plus other payments including for original inventory purchase ($160,709) that was $38,897.08 overpaid the first year according to the records, including those provided by Isaac Choi, certified public accountant. Mr. Choi refused to "bless" the falsified debt to Plaintiffs, see Exhibit "AF" of Counter Motion.

them for years (which Noah did so continue to conduct the operations). Adding this minimum of $500,000 cash the $1 million loss difference, and the actual "cost" the letting Noah continue to control the operations the first year was over $1.5 million. Thus, Noah needed to continue to maintain his control over HPW in order to "get away with" such lucrative activities. There was a real need for Plaintiffs to provided a deceptive cloud cover by creating a literal flurry of transfers back and forth between Plaintiffs and HPW. Again, this was absolutely in contradiction to any notion of arm's length transacting between "seller" and "buyer"; terms which have been merged and blended together between Plaintiffs, the Kobayashis and HPW, see **AFF. THREE** hereto.

a. That is: (1) either the inventory would be in the warehouse, which the tax returns assure us that did not happen, or (2) there would be a huge influx of cash in the approximate amount of $500,000 inventory sold times 1.25 of the gross profit, which would equal about $625,000 in cash. The cash never showed up, at least on the books Noah controlled. See HPW tax returns filed by Hideo, et al, **Exhibit "BB" of AFF. ONE**, which only show large losses. Try as anyone may, accountants have a saying, "You can move a marble under the sheets, but you can't hide it." This is a bowling bowl under cellophane.

b. Further, it is more than unlikely that a business like HPW could sustain such huge losses the first year, and then huge losses every year thereafter and not be funded from somewhere. The funding could not come from inventory because all the HPW tax returns filed by Hideo, et al. show it was not consumed in cost of goods sold nor surplus in inventory.

c. The November 29, 1994 Affidavit of Noah Woo in Plaintiffs' Motion alleges at most two loans of $21,000 and $25,000 each. However, at least $10,000 of the $25,000 loan was to "cover" the contrived

warehouse eviction Noah caused by forging checks due the landlord [*Ex.9 of EXH.1*][4]. Exhibit "D" of the now conveniently stricken Declaration of Lighter filed April 3, 1994 herein shows another batch of forged and otherwise illegally altered HPW checks, totalling in the range of $100,000: there are more, **Exhibit "BF" of AFF. ONE.**

d. Plaintiffs allege $140,063 in advances to HPW, $21,000 alleged from the first year. Even so, the first year there is (1) $38,897.08 cash overpayment on inventory the first year[5], as supported by cancelled checks and the workpapers of the then retained certified public accountant, Isaac Choi, and (2) the additional three $3,000 cancelled checks for the note in par. 3 of the 11/29/94 Noah Affidavit (at minimum improperly credited). Using just these figures as an illustration, (1) the total in the first year only $21,000, and (2) the total out the first year $38,897.08 plus the $9,000, we lost to Plaintiffs net due credits of $26,897.08. Only over a four month period in 1993, Noah forged and/or tampered with at least $106,101 of HPW checks, **Exhibit "BF" of AFF. ONE.** HPW lost at least $100,000 in lost vendor rebates Plaintiffs received while using HPW's money for inventory HPW supposedly could not buy otherwise: HPW paid for almost $8 million in inventory during a four year period. There are other items wrongly not credited to HPW by Plaintiffs, such as profits from Oahu based military sales, seemingly totaling many hundreds of thousands of dollars. HPW had a "second set of books" for

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4 In a not to distant well published Hawaii bankruptcy case regarding First Family of Travel, owned by former Hawaii Islanders baseball team owner David Elmore, apparently only 5 bankers boxes of records out of about 2,000 boxes survived an immediately occurring motion by the trustee to destroy the record. The contrived warehouse eviction was apparently intended to cause a contrived bankruptcy, which Hideo complained about [*Ex."16" of EXH.1*]. Such a bankruptcy would likely also have destroyed the incriminating HPW records, much of which is now safely filed at the Hawaii Bureau of Conveyances ("BofC").

5 Original Lighter Answer filed herein and in Civ. 93-914, page 23, Ex. A00019-A00062 thereof, supported by workpapers of Isaac Choi, BofC Doc. No. 93-176706, filed 10/26/93.

the large Waikiki ABC Drugs account, which required bare or negative profits for HPW in order to keep well the Plaintiffs' relationship with ABC Drugs. Noah nurtured this account in order to be able to have a competitive edge in liquor sales in Waikiki, and seemingly to lure a substitute "buyer" if the Kobayashis ever refused to cooperate with Plaintiffs' iron hand. There appear to be other items as well. HPW paid for Plaintiffs' computer, although this is probably due to there really being only one system between alter ego Plaintiffs and HPW, see **Exhibit "DE" of AFF. THREE**. There appear to be a number of small items paid by HPW that benefited Plaintiffs without reimbursement or credit. A cursory analysis regarding advances is as follows:

| From the Affidavit of Noah Woo, 11/29/94 | | Sums not calculated by Plaintiffs |
|---|---|---|
| par. 4. | $21,000 | $106,101 in some tampered with checks |
| par. 6 | 59,138 | $ 38,897 overpayment of original inventory |
| par. 7 | 25,000 | $ 10,000 used to cover checks forged by Noah |
| par. 8 | 13,925 | $ 9,000 canceled checks for consulting agreement |
| | | $100,000+ lost estimate of vendor rebates not credited to HPW |
| | | $100,000+ lost profits for Oahu military sales |
| | | $100,000+ lost profits for Plaintiffs' ABC Drug account |
| | | other items |
| sub-total | $140,063 | $ more than $140,063 |

7. A detailed analysis of the inventory accounting is as follows, which accounting stands in dominant contrast to Plaintiffs' wrong allegations, as follows:

HPW, INC. INVENTORY PURCHASE SUMMARY, FIRST FISCAL YEAR

| Period | Purchases from Plaintiffs | Purchases from other Vendors |
|---|---|---|
| 10/16-30/89 | | 23,051.67 |
| Nov. '89 | 105,555.93 | 30,424.57 |
| Dec. '89 | 94,253.54 | 33,445.66 |
| Jan. '90 | 152,252.39 | 46,437.84 |

| | | |
|---|---|---|
| Feb. '90 | 91,024.20 | 51,026.04 |
| Mar. '90 | 125,108.60 | 9,794.46 |
| Apr. '90 | 142,590.89 | 34,017.82 |
| May '90 | 93,506.42 | 42,167.77 |
| Jun. '90 | 141,586.54 | 44,092.14 |
| Jul. '90 | 149,462.69 | 45,963.64 |
| Aug. '90 | 124,356.62 | 56,436.32 |
| Sep. '90 | 77,762.38 | 47,645.11 |
| Sub-Totals | 1,297,461.20* | 464,503.04* |

Using formula from Schedule A of the Form 1120, the corporate tax return, for HPW's first fiscal year:

| | Actual and Verified* | Purported With No Signed Invoices** |
|---|---|---|
| Inventory purchases*** | $1,761,964 | $2,446,232 |
| Add cost of labor | 261,963 | 261,963 |
| Less ending inventory | 110,543 | 110,543 |
| Cost of Goods Sold | 1,913,384 | 2,597,652 |
| Sales | 2,550,735 | 2,550,735 |
| Total Income, line 6, pg.1, Form 1120 | 637,351 | -46,917 |
| Ratio of Cost of Goods Sold to Sales | 75% | 1.02% (loss) |

* based on cancelled checks
**from Hideo filed HPW tax returns
***includes original inventory purchase of $160,709

Every month of operation during the first fiscal year, HPW purchases approximately what it consumed. That is normal for a wholesale operations such as HPW, when no surplus inventory is stored. In fact, a less than one month of inventory supply in storage is a normal goal. That is why the ending inventory shows no surplus. Note how the virtually identical operation also had the virtually identical Ratio of Cost of Goods to Sales during the period immediately prior to the October 16, 1989 Sales and Assets Purchase Agreement.

HPW under Noah Woo in 1988, food operations only, hereto:

| | Apr.'88 - Oct.'88 food operations only * | 1987* | 1986* |
|---|---|---|---|
| Cost of Goods Sold | $182,753 | $3,001,324 | $3,171,388 |
| Sales | 242,468 | 3,845,497 | 4,031,483 |
| Total Income | 66,715 | 844,173 | 830,095 |
| Ratio of Cost of Goods Sold to Sales | 75% | 78%** | 79%** |

* from Hawaii BofC Doc. Nos. 93-152905-6, filed 9/17/93, food operations only, **see Exhibit "BD" of AFF. ONE** hereto [*amended*]; first column is most recent month, October 1988; six month average a few points higher, but likely annual average close
**small liquor sales included

For the period October 1, 1992 to June 31, 1993, the financial information on the HPW tax returns filed by Lighter August 14, 1993 is as follows:

| | |
|---|---|
| Cost of Goods Sold | $1,099,499 |
| Sales | 1,437,918 |
| Total Income | 338,419 |
| Ratio of Cost of Goods Sold to Sales | 76% |

Lighter's analysis is correct and substantiated by cancelled checks, verses mere unsigned invoices alleged by Plaintiffs.

The Criminal Investigation Division of the IRS ("IRS-CID") employs this percentage method as one of it primary ways to determine actual income when supported by evidence such as cancelled checks [*Exhibit "L" of Plaintiffs' Memorandum In Opposition, etc. filed July 14, 1994 herein*] verses unsigned invoices for alleged income, Hand book for Special Agents Criminal Investigation Intelligence Division, IRS, section 427.1-14 expressly authorizes IRS-CID special agents to use this vital method for computing income.

7. Isaac Choi, CPA, had great reservations as to the credibility, the honesty, of the purported inventory accounts payable from HPW to Noah in the first year of almost $500,000, **Exhibit "AF"** of Counter Motion. Again, the so called bowling ball of error was there: huge bill, no cash, no inventory, no valid supporting documentation, no full disclosure by "management", and more all equals fake bill guaranteed by now four years of unsigned invoices (Noah and Hideo insisted all other invoices except between themselves be signed or no payments were made).

8. Another way of viewing this is to see that Noah exercised any notice required regarding the allegation that HPW was long in default. Noah's forging [*Ex."15" of EXH.1*] and otherwise tampering with HPW checks[6], Noah receiving many blank HPW checks for years from Hideo [*Ex."6" of EXH.5*], and many other alter ego matters of record. Within no more than only eight (8) months from the 10/16/89 PASA, Noah and Hideo had to hide the truth regarding the absurd fabrication of some $500,000 in falsified accounts receivable from the company certified public accountant, Isaac Choi, in order to trick him into including the bogus sum on the first HPW tax return, **Exhibit "AF"** of Counter Motion [*Ex."27" of EXH.1*]. This is a clear indication that there was no mistake about any notice of the alleged HPW default. That is, according to the analysis in paragraph no. 6 above, only eight months (**Exhibit "AF"** of Counter Motion) prior to the 10/16/89 PASA, Noah's firm was making an average of over $140,000 per year, or almost $12,000 taxable income per month. Then suddenly, with Noah still fully in charge, the firm loses about $60,000 to $73,000 per month.

9. The difference is over $70,000 to $85,000 per month less in taxable income. Only a mentally challenged ward could not notice such

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6 **Exhibit "BF" of AFF. ONE.**

a difference if it was indeed real, and notice of default is a compulsory conclusion. Hideo was an employee of Noah less than one year before the 10/16/89 PASA [*Ex."7" of EXH.5*], even to the point of being involved in promotion of Noah's business on the mainland. See that the approximately $500,000 loss was noted on the HPW tax return[7] as an accounts payable expense which should have been expenses under the accrual system, but was not in order to try and make its contrived sting less obvious. The core of the claims by Plaintiffs is that the OLD bills or charges were left on the books while the NEW bills or charges were paid. The truth is that the tax returns of Hideo and Noah show that their financial systems are based upon expensing the oldest bills FIRST. Even a modified Last-In-First-Out ("LIFO") method must be expressly elected. LIFO was not elected by either Hideo or Noah.

10. Mr. Tanaka held the original promissory notes from the 10/16/89 Transaction [*Ex."18" of EXH.1*]; but Tanaka did not "receive any notification that the promissory notes were in default", even after some four years [*Ex."D" of EXH.5*]. Records show the notes not in default: they were paid in full. At said deposition, Tanaka recalled the purchase price had been reduced $100,000 to $150,000 after the 10/16/89 Transaction. Records show that shortly after the 10/16/89 Transaction, HPW fully paid any debt due Woo from same, even without this $100,000 to $150,000 price reduction.

11. Noah told Mr. Tanaka to hold the stock (with consent of Hideo Kobayashi, see pages 76 and 77 of the 6/17/94 transcript), because "Mr. Woo expressed confidence that everything was going to be paid off within a couple of months" [*pg.s 72 & 76 Ex."18" of EXH.1*]. According to Mr. Tanaka, Noah and Hideo both disclosed that "Mr. Woo had control over

[7] Exhibit "BB" of AFF. ONE.

the checkbook of HPW" and "payments of accounts was basically under the control of Woo, as to how the checks were actually issued and who where signatories on those checks," [*pg. 78 of transcript, Ex."18" of EXH.1*].

12. Although lacking personal knowledge regarding any payoff of any 10/16/89 PASA debt, Tanaka said [*Ex."18" of EXH.1*], "Mr. Kobayashi communicated to me that he had transferred stock ownership to Mr. Lighter,"..."My understanding is that control and ownership of HPW, Inc. had been transferred to Mr. Lighter to some or all degrees", and Lighter was given "51 percent or control of the corporation of HPW" [*Ex."E" of EXH.5*]. Tanaka said "my impression was that the purchase amount should have been satisfied". Tanaka stated, with caveat that he received no instruction from either Hideo or Woo regarding the HPW stock, that "it's my impression that the purchase price was probably satisfied [*Ex."F" of EXH.5*]. Tanaka received no word from Woo to transfer HPW stock to Woo.[8]

13. **Exhibit "CB"** hereto contains three still quite accurate statements filed in the record herein, as follows:

a. The first two pages of inventory section of the fraud audit, backed by not herein included copious month-by-month lists of cancelled checks making up the numbers in the lower half of the first page. The computer runs that Noah, et al. falsified to compose the faked accounts payable are included in **Exhibit "AD"** of the Counter Motion herein.

b. Then there is the financial statement of indebtedness by

[8]This was apparently related to the loss of a product HPW was relying on to sell: Evian Water. Plaintiffs counsel sued Evian Water for Noah, et al. on 11/2/89. On page 1 of handwritten minutes for the 9/11/93 trust meeting [*Ex. "O" of EXH.5*] John Kobayashi (son) stated that at 10/16/89 Transaction, "Evian was part of the deal" and Evian sales were a significant part of pre-10/16/89 sales revenue. There are numerous cancelled checks, other valid accounting methods, and empirical evidence available for proving the stock restriction was invalid soon after 10/16/89, pursuant to payoff of Noah for related 10/16/89 debt. 9/13/93, Noah, et al. demanded payment for all alleged debt WITHOUT yet suing any party therefore, probably because of a "secret deal" with "associate" Hideo.

Lighter, filed with the Third-Party Complaint filed June 18, 1994 herein. Clearly there is only one analysis and one set of accounting numbers provided, subject only to the three possible interpretations of purchase price. Hideo certainly related to Lighter how unclear he was about the what the actual purchase price was. Hideo thought that either (1) the $300,000 note claimed by Plaintiffs was the same as the $300,000 named in the 10/16/89 PASA, or (2) the original inventory was paid with the first mortgage proceeds on the property at 2299 Roundtop Drive.

c. Then the Lighter's Declaration gives some compact, rich detail of the events in the drama herein.

14. **Exhibit "CC"** hereto contains a small variety of documents, as follows:

a. The original possible analysis of the purported second mortgage on the property at 2299 Roundtop Drive, less payments plus the computer machinations and other tortious manipulations by Noah, et al.

b. See a copy of one of the blank checks Bea was forced to give to Hideo from the American United Trust account. This was one reason Bea became President and Hideo was forced from control of HPW.

c. Observe a letter and two bills from attorney Riccio Tanaka, demonstrating that Hideo was the primary client over Noah. HPW paid Noah's legal fees here. This is more evidence that Mr. Tanaka held the HPW stock for Hideo and not Noah. According to the billing, the original HPW warehouse lease was not terminated until mid 1990 on behalf of HPW and Hideo.

d. Included here is a December 7, 1993 letter from Lighter to Hideo via his attorney, which letter is a bill for $290,000 for services rendered; a small portion of which has already been paid.

e. Noah had .iron control over HPW, his alter ego, see AFF.

**THREE**. Related, Hideo performed the architectural work on the warehouse intended for HPW even before Hideo made his supposedly legitimate "offer to purchase" Noah's business; stamped and dated plans are public record, **Exhibit "AF"** of Counter Motion. That is, in the 10/16/89 PASA Hideo paid $50,000 for a lease premium on a 2 1/2 month lease for a single warehouse bay, knowing that HPW would move to the warehouse Hideo worked about a half a year earlier. Hideo knew well in advance of the PASA what the "set up" was. This is probably related to "something on" Hideo that Noah has, even a "set up" from the beginning.

15. There are other matters to consider in SUBSTANCE OVER FORM. For example, Congress intended that debts are "paid" when the deductions constituted income received by the creditor, because the creditor would be required to include these sums in his gross income. The IRS does and the court should determine taxable income form real facts, not from bookkeeping entries. Constructive receipt of sums is credited to shareholders whose control over the corporation, such as here, assure them that funds will be available to satisfy credits (using the "real" books). Constructive receipt of salary is credited on the books of a wholly owned corporation doing a profitable business. There is no constructive receipt when agreement with co-op to defer payments was arm's-length, but the relationship between Noah, Hideo and HPW is no arm's length arrangement. Control over inventory for tax avoidance is denied by IRS. Further, the above is supported by Lighter's admissible felony confession standing in opposition to Plaintiffs' claims, see par. 12(c) of **AFF. ONE**.

Further Affiant Sayeth Naught.

Dated: Honolulu, Hawaii, January 1, 1995.

/S/
ERIC AARON LIGHTER

[Juraf]

*[Exhibits "CA"-"CC" omitted in reprinting]*

[FILED: *JAN 3, 1995*, with Lighter Counter Motion]
[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**AFFIDAVIT OF ERIC AARON LIGHTER, RE: AFFIDAVITS OF HIDEO KOBAYASHI AND NOAH WOO, EXHBITS "BA"-"BF"**

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

I, ERIC AARON LIGHTER, upon being first duly sworn under oath, deposes and says that, to the best of my knowledge:

1. ERIC AARON LIGHTER, individually and dba WELLS FARGO PROTECTIVE ALARM SERVICE CO., (together "**Lighter**") makes this affidavit in support of the hereto annexed counter motion ("**Counter Motion**") against Plaintiffs' Motion For Summary Judgement Re Indebtedness Of Defendant HPW, Inc. To Plaintiffs And Expungement of Notices of Implied Or Constructive Trust, filed November 29, 1994 ("**Plaintiffs' Motion**").

2. There are really four main "players" in the drama herein and the case very similar to this case, Hawaii USDC Civil No. 93-00914-ACK ("**Civ. 93-914**"), which similar case is now approached together with this case for settlement purposes: Noah Woo ("**Noah**"), Hideo Kobayashi ("**Hideo**"), his wife Beatrice Kobayashi ("**Bea**"), Lighter and Nancy LeRosa ("**LeRosa**"). Lighter hereby employs the five well exhibited pleadings, annexed to [*and described in paragraph ("**par.**") 2 of*] the Counter Motion by reference as EXH.1-EXH.5.

**A. PLAINTIFFS RELY UPON PERJURIOUS HIDEO KOBAYASHI AFFIDAVIT**

3. A key instrument that Plaintiffs rely upon is the *prima facie* perjurious and insufficient Affidavit of Hideo Kobayashi, dated August 5, 1994 and Exhibit "B" of Plaintiffs' Motion ("**8/5/94 Hideo Affidavit**") which

in itself also recants earlier and various testimony and position statements, especially as related to HPW, Inc. ("HPW"), including:

a. In contrast to paragraph ("par.") 5 of the 8/5/94 Hideo Affidavit, the first page of the Sale and Asset Agreement signed under notary by Noah, Hideo, Bea and their various artificial entities, states that both Hideo and Bea were together the shareholders of HPW pursuant to contract notarized by all parties [*Ex."B" of EXH.2*]. In par.s 14 and 15 of the 8/5/94 Hideo Affidavit, Hideo refers to himself AND Bea as needing to obtain consent for transfer of the HPW stock (discussed further herein and in the Counter Motion). Even par. 2 of the 8/5/94 Hideo Affidavit stands in contradiction to par. 5, stating regarding the purchasers in the October 16, 1989 Sales and Assets Purchase Agreement ("10/16/89 PASA"), "my wife Beatrice Kobayashi and I, as Buyers".

b. Par. 7 discusses Hideo's "mental strain"[1], alleged to be caused by inability to pay "all amounts due and owing in connection with the" 10/16/89 PASA. Hideo fails to say how he "encountered some financial difficulty" but notes he needed to "save the business." Therefore, the condition of "unless the business was saved it would fail" existed BEFORE Lighter entered the drama herein. Lighter could not possibly be responsible for the debts of HPW, in contrast to Plaintiffs' absurd $6

1 Hideo keeps changing his mind, whatever its condition, on the matter of alleged indebtedness to Noah, Par. 5 of the 7/14/94 Hideo Affidavit also notes that somnambulistic Hideo suffered "severe mental strain". It was revealed at the end of August 1993 that Hideo apparently suffered from narcolepsy, i.e. falling asleep during conversations, etc. Bea, however, did not suffer this strain, which is why a key reason Bea became HPW President. Bea wanted Hideo removed from directorship and management contro. In addition, Hideo continued to give Noah blank checks despite promises not to, albeit in the face of threats and intimidatino by Noah. That is why Plaintiffs are trying to ignore the relevant documents signed by Bea, who generally kept her wits. Bea did and still does teach elementary school during the day; she could not suffer "severe mental strain" AND teach elementary school. Par. 8 of the 7/14/94 Hideo Affidavit fails to include Bea in partial management control of HPW. Par. 10 of the 7/14/94 Hideo Affidavit wrong, as Lighter was asked to conduct the "fraud audit" by both Bea and Hideo [*Ex."14" of EXH.1*]

million demand on Lighter, **Exhibit "BA"** herein, that takes no demand action on the Kobayashis or HPW. This paragraph attempts to lead one to the conclusion that HPW just recently came into "problems". **Exhibit "BB"** (HPW's tax returns) hereto, and the attached Affidavit of Eric Aaron Lighter, Re: Actual Debt Accounting For HPW, Inc. (**"True Debt Affidavit"**), with exhibits thereto, proves this wrong. Other exhibits are necessary to prove the huge losses the first year of operation and every there after were Noah's fault, and same have been provided to the Court and Plaintiffs .

c. In contrast to par. 9 of 8/5/94 Hideo Affidavit, the August 6, 1992 memo from Hideo to HPW tax return preparer Tony Lee (Third-Party defendant in Civ. 93-914) stated, "There is something surrealistic about all this. At this point I can't grasp in my mind the whole picture of whats happening only that business is up" [*Ex."4" of EXH.1*].

d. In contrast to par. 9 of the 8/5/94 Hideo Affidavit is the September 20, 1993 Honolulu Police Department ("HPD") report signed by [*Ex."14" of EXH.1*] where, in essence, Hideo and Bea sought to have Noah arrested for embezzlement and tax fraud. Bea has never recanted this statement and thus apparently stands in opposition to her husband. This HPD report is expressly based upon Lighter's "fraud audit", which demonstrates that Plaintiffs owe HPW money. Lighter supplemented this HPD report the next day with the filing of the "fraud audit" and a supplemental statement signed by Lighter under the same HPD report number 93-381865[2]; however Lighter was never notified of any determination as to either the Kobayashi HPD report or Lighter's

2 The Kobayashi HPD report that Lighter filed, as well as related HPD reports are filed in Exhibit "B" of Exhibit "1" of Lighter's original Answer herein, whichi is also the original Answer in Civ. 93-914. The September 20, 1993 HPD report expressly states tby the Kobayashi hat Lighter was asked "to conduct an audit of our books and set up accounting procedures", even by going through "50 boxes of paper".

supplement thereto. Filing an intentionally false HPD report is a crime, HRS § 710-1015.

e. In contrast to par.s 8 and 9, Exhibit "BB" hereto are the HPW tax returns, which use an accrual accounting system with a cost inventory method. The LIFO system, last-in-first-out, is rejected. This means that, regardless of cost valuation, the first moneys pay the first bills. Noah could not have carried the old debts on the books, created new debts, and then pay off the newer debts first. Even if some later debts were due, the earlier ones were extinguished and all traces of debt arising out the 10/16/89 PASA were removed, and therefor any discussion as to possible restriction on the HPW stock.

f. In contrast to par. 9, especially as discussed in the Counter Motion, are the Notices of Implied or Constructive Trust ("NICT") discussed in the Counter Motion, which are wholeheartedly supported by UCC-1 in which Hideo expresslly states that Noah committed "fraud" and "embezzlement". The UCC-1s are also discussed in the Counter Motion hereto.

g. In contrast to par. 10 of the 8/5/94 Hideo Affidavit, significant recitals by Hideo are contradictory [*Ex.s "1", "2" and "3" of EXH.1*], and were mooted out with the American United Trust ("AUT") Indenture [*Ex."11" of EXH.1*] that both Hideo and Bea signed.

h. In contrast to par. 11 of the 8/5/94 Hideo Affidavit, there never was an agreement to give Hideo $250,000 cash for the option to purchase the HPW stock. The figure arises as merely a cap on the profits from the development of the Beaumont Woods Estate ("Beaumont") that should be allocated towards that end sometime in the future, see especially par.s 26 through 29 of the 11/7/94 Lighter Motion [*EHX.1*]. The agreement terms of the July 25, 1993 Memorandum Agreement [*Ex."3" of EXH.1*]

were changed by the AUT trust indenture [*Ex.s "10" & "11" , & par.s 10-12 of EXH.1*], as were the stock transfer terms [*par.s 12 & 13 of EHX.1*]. The stock option price was expressly $10.00 [*Ex."3" of EXH.1*]. The option premium was already paid for July 25, 1993, especially by the transfer of all interest in the Beaumont deed, and not the deed itself, as owner of the deed, Credit Bureau International, Inc. ("**CBI**"), became the AUT trustee. Bea was made president of CBI [*Ex."6" of EXH.1*] as proof the Kobayashi's controlled the fate of Beaumont for a time. Thus, even any delay in development and ultimate payment of any profits is the fault of the Kobayashis.

i. In contrast to par. 13 of the 8/5/94 Hideo Affidavit, Hideo falsely claimed that American National Trust ("**ANT**") covenanted to transfer the title to Beaumont, but in fact on a 100% interest in the Deed was covenanted to be transferred [*Ex."3" of EXH.1*], which it was [*Ex."11" of EXH.1*]. Later, as agreed [*Ex."3" of EXH.1*], title was transferred to a trust, where it remains [*Ex.s "22" & "23" of EXH.1*]. ANT is wholly owned by American Properties Trust ("**APT**"), a Dallas trust, noted in the August 15, 1993 Hawaii Department of Commerce and Consumer Affairs ("**DCCA**") memorandum filed by Bea [*Ex."5" of EXH.1*]. Extensive discovery on the trusts has already provided to Plaintiffs. Clearly the Kobayashis knew that ANT gave over to AUT, by way of the AUT trust indenture [*Ex."11" of EXH.1*] signed by Hideo and Bea, all interest it contractually had in the HPW stock. ANT was setlor with Hideo therein. The AUT indenture is a Dallas trust, where any challenge against such trust needs to utilize Texas law. whose trustees were APT, CBI and BEA,[3]

3 Bea and LeRosa alone were the signatories on the AUT checking account, inasmuch as Hideo was being taken out of management of HPW, and Lighter was attempting to cope with the fifty (50) bankers boxes of records. Nevertheless, under Lighter's supervison, the AUT checks paid payroll, bought inventory, and generally

(continued...)

j. In contrast to par. 13 of the 8/5/94 Hideo Affidavit, Hideo falsely claimed that a $37,000 mortgage on the property at 1045 Spencer Street was not provided or available to HPW's landlord. In fact, this mortgage was offered [*Ex."26" of EXH.1*], but two things occurred: (a) the debt was higher than $37,000, especially due to Noah secretly having forged checks in order to divert warehouse rent from the landlord to Noah (and his beneficiaries) who obviously intended to cause more than the HPW eviction [*Ex."15" of EXH.1*], which is why Hideo thought the indebtedness was lower ($37,000 was thought to be a figure higher than what was due, including all legal expenses), and (b) Hideo told Lighter to stop pursuing the mortgage offer because Hideo had made arrangement for an HPW insider to loan $10,000 cash to HPW in order for HPW to make a discounted settlement offer[4], which was accepted shortly thereafter in approximately intended form. In the settlement process, attorney Riccio Tanaka was the attorney for HPW. Noah arranged for the loan, and understood Mr. Tanaka was the counsel for the matter. Yet, at no time during that period in mid 1993 did Noah ever make demand on Mr. Tanaka for the HPW stock [*pgs. 109 & 110 of Mr. Tanaka deposition, Ex. 18 of EXH.1, Ex. "Q" of Plaintiffs' exhibits at 10/24/94 hearing*]. Noah now is quite wrongfully suing Mr. Tanaka for allegedly mishandling the HPW stock [*Ex."17" of EXH.1*].

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(...continued)
paid for the operations HPW until the time Bea insisted upon a new checking account without her signature on it in order to remove her from operations [*Ex."C" of EXH.2*]. Bea felt comfortable with this arrangement because she was President of HPW and CBI [*Ex."6" of EXH.1*].

4 Both insider loans detailed in Exhibit "Q" of Plaintiffs exhibits delivered to Court at hearing herein held on October 24, 1994, noted on Plaintiffs' Certificate of Service filed October 28, 1994, only the first page of which being delivered to Lighter. Therein named Grover Kam has, with Noah, "taken" the employees, clients, and operations of HPW away from HPW.

k. In contrast to par.s 14 and 15 of the 8/5/94 Hideo Affidavit, where Hideo says he never received written consent from Noah to sell the HPW stock to Lighter's group, Noah did know about the transfer without objection [*Ex.s 28" & "29" of EXH.1, Ex."15" EXH.5*].

l. In contrast to par. 16 of the 8/5/94 Hideo Affidavit, the 11/8/93 notice filed by Hideo in DCCA wherein Hideo says that he was the sole officer and director of HPW since September 1, 1993 [*Ex."8" of EXH.1*], even though this is absurd in view of the September 11, 1993 meeting attended by Hideo personally that was held for AUT and HPW, whose stock AUT owned 100% of since July 25, 1993 [*Ex.s "3", "9", "10" & "11" of EXH.1*] which it owned; where the raw minutes were written in Bea's own handwriting [*Ex.s "7" & "8" of EXH.1*]. Hideo's fraudulent statement is also contradicted by:

(1) Credit application disclosures, one intended for Bank of Hawaii and one used by Servco Financial [*Ex.s "20" & "21" of EXH.1*], dated as late as early October 1993, where Hideo understands that he is indeed not the sole officer, director and shareholder for HPW. These disclosures reveal the slate of officers and directors at DCCA by Bea and LeRosa as confirmed by Bea's handwritten AUT/HPW minutes [*Ex."7" of EXH.1*].

(2) DCCA report filed August 17, 1993 by Bea [*Ex."5" of EXH.1*] where she notes the true slate of officers, directors and shareholders of HPW, in contradiction to Hideo's fraudulent DCCA filing November 8, 1993 [*Ex."8" of EXH.1*]. This DCCA report is supported by numerous other documents, including the 9/1/94 DCCA filing by Lighter and LeRosa for the Kobayashis [*Ex. "6" of EXH.1*], the stock ledger [*Ex."12" of EXH.1*], and Bea's handwritten AUT/HPW minutes [*Ex."7" of EXH.1*].

(3) DCCA filing by Bea on August 17, 1993 [*Ex."30" of EXH.1*] pursuant to the slate of officers, directors and shareholders filed the same

day [*Ex."5" of EXH.1*]. The share distribution noted therein were physically issued shortly thereafter on September 1, 1993[5] [*Affidavit of LeRosa and Ex."12" of EXH.1*].

(4) AUT checking account was established pursuant to Bea's August 17, 1993 DCCA filings [*Ex.s "5" and "30" pg. one of EXH.1*]. Later, Bea's own handwritten authorization made to present to Bank of Hawaii [*pg. 2 of Ex."30" of EXH.1*] was presented to Bank of Hawaii [*Ex."C" of EXH.2, Ex."30" at pgs. 2,3 & 4 of EXH.1*] in order to open another Bank of Hawaii account without her name on it: Bea wanted less operations involvement, and could afford to do so since she still retained significant control as President of HPW. The Kobayashis knew there was no conflict with Bank of Hawaii because there was no stock escrow there [*Ex."13" of EXH.1*].

(5) This was partly because Hideo kept pressuring Beatrice into giving him blank checks.[6] The Kobayashi family and the HPW employees and vendors received checks from both of these accounts [*i.e. Ex."10" of EXH.5*].

m. In contrast to par. 18 of the 8/5/94 Hideo Affidavit, the Kobayashis did indeed consent to the reissue of the HPW stock [*Ex."5", "7", "11", "12", "13", "18", "20", "21 &"30 at pgs. 2,3 & 4 of EXH.1, Ex."C"*

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5 This was a busy time for Lighter, as he was in the middle of the first phase of his "fraud audit" of HPW. Then Lighter was also coordinating the operations of HPW as its CEO, even though Bea would thereafter operate as President of HPW for absolute control purposes, especially in order to assure Hideo was removed from HPW control.

6 Hideo used the same office employees, forms, computer format, office, post office box (sometimes tortiously the same checkbook [*Ex."9" of EXH.5*], delivery drivers, salespeople, business cards, phone number, same most everything, see True Debt Affidavit hereto. It took Lighter weeks to reconcile the July 1993 HPW check register per Hideo's practice to write numerous checks dated and signed with payee to Noah and friends stated, but amounts left blank. Hideo, as usual, did not even know what the amounts were: Noah took care of that [*Ex."3" of EXH.5*].This practice left blank amounts in otherwise filed-out lines in the check register pages: another reason Bea forced Hideo to step down from HPW management control.

*of EXH.2*]. The intent can be best determined from the testimony of Mr. Tanaka, who incorporated HPW, plus structured and drafted the 10/16/89 documents, although there is much corroborating evidence [*most of EXH.1-5*]. It is significant that the HPW stock in question is newly formed stock and no purchase money security interest even claimed. Unless expressly stated in both writing and public financing statement, the subject item is not included as a security interest. Mr. Tanaka was not an institutional escrow clearly holding HPW stock for Noah, and thus a public financing statement was required. Mr. Tanaka was holding the stock for Hideo [*Ex. "18" of EXH.1*] pursuant to both Hideo and Noah telling him of the immediate payoff of any 10/16/89 PASA debts. Regarding the so-called restrictive language on the stock, which Lighter, et al. never saw before September 17, 1993, Mr. Tanaka viewed as "equating it then to a notice of pendency of action"..."anyone who receives the stock receives it subject to those restrictions...for notifications", and not a bar to sale of the HPW stock [*Ex."18" of EXH.1*]. There was no security interest [*par. "14" of EXH.2*]. The related adverse rulings of the honorable presiding judge, Harold M. Fong, will be hotly contested by Lighter on appeal; and especially pursuant to an abundance of *prima facie* evicence not considered by the judge, i.e. how Lighter is a *bona fide* bailee without notice as to any stock restrictions.

n. In contrast to par. 19 of the 8/5/94 Hideo Affidavit, the July 25, 1993 transfer of all the HPW stock [*Ex."11" of EXH.1*], the sale of the HPW stock by option [*Ex."3" of EXH.1*], which option exercised [*Ex."5" of EXH.1*], occurred without asking Mr. Tanaka for the HPW stock. Hideo and Bea believed that the HPW stock was lost and not in the possession of Mr. Tanaka. Hideo and Bea knew that Bank of Hawaii Escrow never had the stock [*Ex."A" of 11/13/94 Lighter Memo*]. Hideo and Bea delivered

over fifty (50) bankers boxes of records to Lighter, partly in hopes that he could find the stock among the vast array of records which took Lighter months to begin to fully search through, and with discovering same was forced to reissue the HPW stock [*Affidavit of LeRosa & Ex. "12" of EXH.1*]

o. Also in contrast to par.s 3, 9, 13 and 19 of the 8/5/94 Hideo Affidavit is the sworn testimony of Mr. Tanaka [*Ex."18" of EXH.1 is the transcript of Mr. Tanaka's testimony*] obtained pursuant to subpoena demanded by Plaintiffs. At the deposition, Noah was present, as was the attorney for the Kobayashis. Mr. Tanaka was granted waiver of attorney-client privilege from both Noah and the Kobayashis, **Rule 26(b)(1)(2) FRCP**. The contrasts between the testimony of Hideo and Mr. Tanaka demonstrate that one party is not telling the truth. Mr. Tanaka's testimony is supported by valid evidence, while Hideo's testimony is in contradiction to the evidence, see above. Mr. Tanaka structured the 10/16/89 PASA between Noah and the Kobayashis, and wrote the language therefore. Mr. Tanaka is the best party to describe the intentions of the 10/16/89 PASA documents. Clearly Mr. Tanaka was not an institutional escrow, had no escrow instructions he operated under, and certainly was not under the control of Noah [*par.s 12 - 23 of EXH.1*]; absolutely Lighter, et al. were bailees without notice of any stock restrictions. Hawaii's Uniform Commercial Code, **HRS § 490-2-401(2)**, is not dispositive of the rights of third-party *bona fide* buyers or lienors. Hideo made contradictory recitals about the HPW stock [*par.s 3 - 5 of EXH.1*]. Then Hideo and Bea transferred all the HPW stock to AUT [*Ex. "11" of EXH.1*], and are thus estopped from claiming otherwise.

(1) Par. 4 of the 8/5/94 Hideo Affidavit states, "the Sales and Assets Agreement, which was prepared by Riccio M. Tanaka, Esq." Hideo ignores the contrast between the widely differing statements of Mr.

Tanaka and Hideo, including as follows:

(2) Par. 3 of Hideo's Affidavit is in contrast to Mr. Tanaka's testimony on page 61 of the transcript.

(3) Par. 9 of Hideo's Affidavit is in contrast to Mr. Tanaka's testimony on 72, 78, 80, 85, 109 and 110 of the transcript. In addition, the record is replete with evidence in contrast to Hideo's testimony, including Hideo's own earlier testimony, see above.

(4) Par. 13 of Hideo's Affidavit is in contrast to Mr. Tanaka's testimony and/or statements and actions in the warehouse eviction case, where Mr. Tanaka knew that Hideo had called a stop to the $37,000 mortgage offer in favor of a discounted cash offer presented by Mr. Tanaka. At that time, Mr. Tanaka no doubt believed he was holding the HPW stock for Hideo's benefit without any security interest thereon.

(5) Par. 19 of Hideo's Affidavit is in contrast to Mr. Tanaka's testimony on pages 72, 78, 80, 85, 109 and 110 of the transcript. In addition, the record shows that the Kobayashis transferred all the HPW stock on July 25, 1993 [*Ex."11" of EXH.1*], as well as exercised the option to purchase [*Ex."5" of EXH.1*]. The Kobayashis knew there was no Bank of Hawaii escrow named in the 10/16/89 PASA [*Ex."1" of EXH.2, Ex."13" of EXH.1*]. The Kobayashis (1) had AUT open an account at [*Ex."C" of EXH.2, Ex.s "30" of EXH.1*], and (2) were going to borrow an HPW revolving credit line at [*Ex."20" of EXH.1*], Bank of Hawaii since they knew there was therefore no conflict owing to no escrow there.

p. In further contrast to all references supporting Noah and opposing Lighter in the 8/5/94 Hideo Affidavit is the express language of Hideo in the two UCC-1 financing statements filed at the Bureau of Conveyances of the State of Hawaii ("BofC"), Exhibit "AA" hereto, which include the allegations by Hideo of "fraud" and "embezzlement" by Noah

against HPW, et al., described further herein (and Counter Motion).

4. Another perjurious affidavit of Hideo, dated July 14, 1994 ("**7/14/94 Hideo Affidavit**") is one filed by Plaintiffs in their memorandum in opposition to certain defendants motion for partial summary judgement filed on or about July 14, 1994 herein which also recants earlier statements and documents:

a. Page 4 of this affidavit is missing and was never supplied.

b. Par 3 intentionally omits the real story [*most of EXH.1 & 2*], including that Bea owned the stock with Hideo [Ex.""B" of EXH.2].[7]

c. Par.s 4, 5 and 9 here are par.s 5, 25 and 10 respectively in the 8/5/94 affidavit, already discredited and rebutted.

d. Par. 10 is clearly false in that Hideo and Bea asked Lighter to conduct the fraud audit [*Ex.s "7","9" & "14" of EXH.1*], see footnote 1. The September 20, 1993 HPD report [Ex. "14" of EXH.1] was co-signed by Hideo (and Bea)--essentially asking the HPD to arrest Noah-stating Bea asked Lighter to conduct the "fraud audit" (also presented to HPD). For years, Bea's long, broad HPW role[8] included being a HPW bookkeeper, to whom employees wrote notes as though she was office supervisor. Hideo's 7/14/94 affidavit intentionally omits how Bea individually loaned money to HPW, including by obtaining a $9,000 credit union loan [*Ex."3" of EXH.5*]. When it became clear Hideo was unfit to manage HPW, Bea became President under Lighter as CEO. Bea worked closely with LeRosa to help Lighter run HPW [*Ex."7" of EXH.1*].

e. The portion of Par. 19 available relates to a fraud audit copy

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7 Although Hideo regularly made contradictory recitals and other statements, Hideo originally told Lighter the "stock escrow" was strictly and solely related to purchase of inventory [*Ex."1" of EXH.5, and not contradicted by Ex."3" of EXH.1*]: Even initially, Lighter had some indication the alleged "inventory debt" was probably paid off, i.e. tax returns analysis and the strong representations by Hideo to Lighter.

8 Evidence is clear in the approximately seven (7) bankers boxes of evidence Lighter placed on public records at the Hawaii Bureau of Conveyances.

sent to Sunkist at Hideo's request; originally sent in order to attempt to keep product flowing to HPW when Noah wrongfully cut off product supply [*Ex."16"-"17" of EXH.5*]. Evidence shows Noah cut off HPW's supplies in attempt to kill HPW, partly because Noah was unable to force HPW into bankruptcy [*Ex.s."14" & "16" of EXH.1*]. The Kobayashis wanted this package sent to Sunkist, but no doubt Hideo is attempting to blame Lighter in another "set up": get Lighter to attempt to "save" HPW ALLIED WITH Hideo and Bea, but then absurdly try to blame Lighter for acting alone with Bea silent.

**B. HIDEO'S AFFIDAVITS SEEM BASED UPON CORRUPT "SECRET DEAL"**

5. Even Hideo does not comment on or stipulate to in any way the alleged debts other than the $300,000 promissory note. It is relevant to note that Bea has never testified regarding any of these matters, not recanted any of her testimony or statements, including those named above; although Bea would be estopped from doing so, even as Hideo is (see discussion herein and Counter Motion regarding self-invalidating testimony and evidence). Clearly there is a "secret deal" between Noah and Hideo[9]. Hideo is willing to have the $300,000 be outstanding because that is secured by the property that Lighter purchased from the Kobayashis, located at 2299 Roundtop Drive. The Kobayashis sold Lighter this property voluntarily by Deed notarized by two separate notaries, with Lighter not present at either signing [*Ex."A" of EXH.4 is U.S.D.C. Chief Judge Alan C. Kay' order in agreement*]. Plaintiffs refuse to sue or enforce demand for any sums they allege are due, except to attempt to make

9 On 9/13/93, Ron Grant, counsel for Plaintiffs sent HPW and Kobayashis demand letters for some $1.1 million dollars not actually due. Grant even threatened to foreclose on the property at 2299 Roundtop Drive, Honolulu, where Noah's firm Hawaii-Pacific Wholesalers, Inc. held a satisfied but as yet unreleased second mortgage in the face amount of $300,000. Mysteriously, no prior demands were given, and no suit to collect any of these alleged sums has been filed.

Lighter pay for same, see Exhibit "BA" annexed hereto; which is exactly what Lighter predicted would happen some one year ago. If indeed the indebtedness were authentic, then the Kobayashis could have no hope in keeping the Roundtop property they want transferred back to them[10]. Apparently the "secret deal" is that the only indebtedness acknowledged between Noah and Hideo is the some $210,000 balance alleged by Noah to be due on this purported second mortgage note. The mutual goal of both Noah and Hideo is to stop Lighter from his effective tax fraud and embezzlement investigation, even at the cost of significant perjury by Hideo. Apparently Bea is unwilling to commit the same perjury as Hideo.

6. Rule 56 of the Federal Rules of Civil Procedure ("FRCP"), discussed further in the Counter Motion, is one reason Hideo is guilty of contempt, leaving the question of complicity by counsel for Plaintiff. Inasmuch as Plaintiffs' Motion appears AFTER the 11/7/94 Lighter Motion and 11/13/94 Lighter Memo [*EXHS 1 & 2*], Plaintiff certainly has no excuse for ignoring the obvious, *prima facie* evidence that Hideo's 8/5/94 Affidavit is intentionally wrong or perjurious. Counsel for Plaintiffs, Ronald Grant, states in his November 29, 1994 Affidavit of Ronald V. Grant, par. 3:

"Attached hereto as Exhibit "B" is a true and correct copy of the Affidavit of Hideo Kobayashi, attached to Plaintiffs' Motion For Declaratory Judgement and for Preliminary Injunction Against Eric Aaron Lighter filed August 5, 1994, which expressly declares HPW has not repaid its indebtedness to Plaintiffs" (emphasis added).

7. Mr. Grant knows that Hideo only addresses the alleged indebtedness of the $300,000 (purported to be $210,000) and nothing more. Mr. Grant obtained Hideo's affidavit for the bad faith purpose of attempting to claim that Hideo agrees to the outrageous total of alleged

10 An interest in the Roudtop property was LEGITIMATELY pledged as a bond to cover the cost of scrutiny by the San Francisco Federal Grand Jury related to Gregory Galaski, both Third-Party Defendants herein; which is a matter thwarted by [Plaintiffs].

indebtedness of over $1 million claimed by Plaintiffs. Mr. Grant was apparently unable to obtain the affidavit of the other party to the alleged debt, Bea Kobayashi. There is no valid corroboration to Hideo's perjurious August 5, 1994 affidavit.

**C. NOAH'S AFFIDAVIT**

8. In Plaintiffs' 7/14/94 Plaintiff Memo, Noah filed an affidavit dated July 14, 1994 (**"7/14/94 Noah Affidavit"**) [*Ex."19" of EXH.5*]. Noah filed another affidavit with Plaintiffs' Motion addressed herein, dated November 29, 1994 (**"11/29/94 Noah Affidavit"**).

a. 11/29/94 Noah Affidavit. This affidavit is a statement of falsehoods.

(1) Par.s 3-9 are not supported by the 8/5/94 Hideo Affidavit, which only addresses paragraph 2 of the 11/29/94 Noah Affidavit.

(2) Par. 3 is false, including due to the three $3,000 cancelled checks therefore [*Ex. A00049-51 of Exhibit "A" of original Answer of Lighter in Civ. 94-914, part of Ex."1" of Lighter's original Answer herein*], Also available, in addition to these three checks, is Noah's ledger for same [*original at 10/26/93 BoC, Doc. No. 93-176708*], **Exhibit "BC"** hereto (checks are included therewith for convenience). This is more payments from HPW to Noah that were not credited properly, even via false affidavit by Noah.

(3) Par.s 2-9 are contrary to the tax returns and financial statements of Noah closely held "alter-ego" firms, see **True Debt Affidavit** hereto, which use an accrual accounting system with a lower of cost or market inventory method. In fact, the LIFO system, last-in-first-out, is expressly rejected. This means that, regardless of cost valuation, the first moneys pay the first bills. Noah could not have carried the old debts on the books, created new debts, and then pay off the newer debts first. Even

if some later debts were due, the earlier ones were extinguished and all traces of debt arising out the 10/16/89 PASA were removed, and therefor any discussion as to possible restriction on the HPW stock. This is discussed more in the True Debt Affidavit attached hereto.

(4) Par. 2-9 fail to disclose that Noah controlled HPW with an iron fist for some four years[11], and thus any losses or non-payments are Noah's fault. This is especially evident in reviewing **Exhibit "BD"** (Noah's financial statements and tax returns[12]) in contrast to **Exhibit "BB"** (HPW's tax returns), further discussed in the Counter Motion and the True Debt Affidavit attached hereto.

(7) Par. 11 is false [*Ex."15" of EXH.5*].

(8) Par. 12 is false, as discussed herein (and Counter Motion) regarding NICT, which are wholeheartedly supported by UCC-1 in which Hideo expressly states that Noah committed "fraud" and "embezzlement". The NICTs and UCC-1s are more fully discussed in the Counter Motion hereto.

b. 7/14/94 Noah Affidavit. This affidavit is contrary to Mr. Tanaka's testimony [*Ex."18" of EXH.1*], especially significant because Mr. Tanaka structured and wrote the 10/16/89 PASA documents, **Rule 901(b)(1) FRE**, and sent them all to Noah (and Hideo) certified in March 5, 1990 without objection for some four years [*Ex."A" of EXH.2*].

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11 Hideo was Noah's employee in 1988, less than one year before the 10/16/89 PASA. Related, Hideo performed the architectural work on the warehouse intended for HPW even before Hideo made his supposedly legitimate "offer to purchase" Noah's business; stamped and dated plans are public record. That is, in the 10/16/89 PASA Hideo paid $50,000 for a lease premium on a 2 1/2 month lease for a single warehouse bay, knowing that HPW would move to the warehouse Hideo worked about a half a year earlier. Hideo knew well in advance of the 10/16/89 PASA what the "set up" was. This is probably related to the "something on" Hideo that Noah has. The tax and money laundering scan that HPW turned out to be may have been a "set up" from the beginning, Exhibit "BE" hereto from BofC Doc. No. 94-10571 filed 6/23/94).

12 These documents are from BofC at Doc. No. 93-152905 filed 9/17/93 (tax returns) and Doc. No. 93-152906 filed 9/17/93 (financial statements).



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(1) Par. no. 3 omits how Hideo originally told Lighter that the "stock escrow" was strictly and solely related to inventory purchases [*Ex."1" of EXH.5*]. Further, Noah is obviously embarrassed about speaking to the purpose of the subject promissory note, which was for Noah to be a mere consultant rather than rule with an iron hand, including for sums as small as $40 [*Ex."5" of EXH.5*]. Hideo signed blank checks for Noah to direct payment on [*Ex."6" of EXH.5*]. Hideo and Noah shared the same secretary, and almost everything else, generally as alter egos, save for Noah being in control of his "second self" Hideo. For four years, HPW used the same operations system Noah had used for years in order for Noah to maintaining iron control over HPW, no matter how much Noah victimized HPW. "Consultant" Noah's real control over HPW was obviously incriminating evidence, destruction of which was advantageous to Noah; and killing HPW would go far in accomplishing this [*Ex."16" of EXH.1*]. Lighter intervened, saving HPW from bankruptcy; partly by showing Noah's forgery of checks, caused a contrived warehouse eviction, which almost caused such bankruptcy; a matter Hideo complained about [*Ex."9" of EXH.5*] and which was detrimental and included over $100,000 in checks forged or wrongfully altered by Noah, **Exhibit "BF"** hereto. The near bankruptcy forced HPW to move warehouses at a time when the business was already severely damaged by Noah's drain on HPW, BEFORE Lighter entered the drama herein. Nevertheless, this crime is committed when one makes or passes a false instrument with the intent to defraud, and the element of loss or detriment is immaterial. It appears clear that the various checks that compose **Exhbit "BF"** hereto, made over only a four month period in 1993, were for the additional dark purpose of Noah creating a cloud of confusion and a flurry of checks in order to have a few key checks divert significant funds from the

warehouse landlord in order to cause a horrendous eviction from the warehouse site at a vulnerable time[13].

(2) Par. no. 4 omits how Noah controlled the HPW checkbook for some four years, with Hideo commonly giving Noah blank checks [*Ex."6" of EXH.5*] and other checkbook control, see **Affidavit of Eric Aaron Lighter, re: Hideo Kobyahasi, et al. And Noah Woo, et al. Being Alter Egos to HPW, Inc.** attached hereto, and "taking" via forging HPW checks [*Ex."9" of EXH.5*]. Par. no. 6 no doubt intentionally omits how the Internal Revenue Service ("IRS"): (a) forced almost $50,000 change against Noah personally in February 1991, or (b) seized the bank accounts of HPW on 12/26/92 [*Ex."12" of EXH.5*][14]. It seems par. no. 4 intentionally omits how Noah's own accounts receivable computer run is some $176,000 less than billed amounts[15] [*Ex."13" of EXH.5*]. Also omitted was how, impossibly, Noah even caused CPA Isaac Choi [*Ex. "27" of EXH.1*] to wrongly report there were no income records for the first 3 1/2 months of operations--he used income averaging for the tax return--

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13 The purpose of this flurry was to better able to slip by the checks forged for the purpose of causing the HPW eviction--and then expectantly a contrive bankruptcy to hide to gross incrimination in the records--without Liberty Bank objecting, which they never did. This occured even though Noah is not on the HPW signature card, which Liberty Bank knew because Plaintiffs had their accounts at Liberty Bank as well. It was precisely because Liberty Bank saw Plaintiffs interacting daily with HPW on a virtual alter ego basis, via transfers back and forth in a feeble attempt at an arms length relationship, that Liberty Bank only needed this small cloud in order for Plaintiffs to accomplish the forgery based, malicious warehouse eviction of HPW.

14 HPW had a continued relationship with collection officer Tracy Robles (phone 453-2000), [ *Ex. "11" of EXH.5*], who was also sent by certified mail HPW's 1992 tax return prepared by Tony Lee. Mr. Lee, Third-Party defendant in Civ. 93-914 apparently left town immediately after discovering Lighter was unwilling to say there is nothing wrong with having two opposing tax returns for HPW (Mr. Lee's filing vs. Lighter's filing.

15 Here seen is how, on 9/30/92, Noah billed $456,350.76 but his own Accounts Receivable showed HPW owing only $279,906.10: both numbers are false; in other billings the amounts change from month to month with no correlation to alleged invoices paid, and again we see no invoices were ever signed between Noah and Hideo [*Ex."13" of EXH.5*].

even though abundant records were available: records that were composed virtually the identical way company records had been composed continuously for some ten years earlier by Noah's crew that stayed on with the Noah/Hideo team [*Ex."14" of EXH.5*][16]. This kind of smokescreen set the stage to introduce many false invoices, all unsigned between Noah and Hideo. Exhibit "L" of the 7/14/94 Plaintiff Memo shows how Noah introduced falsified computer runs to justify falsified invoices.[17] Noah had HPW pay for suppliers for Noah's own credit HPW's expense. Clearly, Noah intended to omit how he and/or such suppliers received and cashed checks from HPW written or purchased by Bea, LeRosa and Lighter [*Ex."15" of EXH.5*].

(3) Par. 6 is more than misleading. HPW paid millions of dollars directly to suppliers Noah alleged were "his creditors". Special efforts were made to try and correct this constant, intentional abuse by Noah against HPW. Noah thwarted[18] HPW's efforts to obtain credit directly.

16 Even as early as 3/31/90, HPW listed debts to Noah on its computer runs in the sum of $83,242.96, where Noah showed a huge debt that ended up on the HPW tax return six months later as $487,461. This is impossible because the fraud audit shows huge payments for inventory purchases every month usually about equal to the amount inventory sold, when adjusted to cost. From the very first, 10/16/90, Noah started building up false, unsigned invoices that totaled over $200,000 more than utilized in just the first two and one half months. To conceal the mounting, bogus, unsigned invoices, Noah did two main things: (1) Noah overstated income by about $80,000 for the first 3 1/2 months, while at the same time, and then, as stated above; Noah caused CPA Isaac Choi [*Ex. "27" of EXH.1*] to wrongly report that there were no income records for the first 3 1/2 months, (2) then Noah introduced falsified computer billing statements in order to defuse attention from such falsified invoices.

17 It noteworthy that Noah controlled crews producing the computer runs, which runs used the same general and often specific format as Noah's prior and then current computer runs.

18 The inventory purchasing credit rightfully belonged to HPW. Therefore even Noah, et al.'s prior arguments that there was an attack on Noah's credit is ridiculous. HPW had no choice. Noah was about to or did cut off inventory supplies, thus killing the business. The contracts with Noah provided for up to 120 days credit on Paradise Gold products, and 60 days for all else. Noah, though, was determined to halt HPW. Noah even demanded payment be wired into his account before he ordered product [*Ex."17" of EXH.5*]. The record shows that from July 1993 through October 1993 Noah was fully paid, but Hideo believed Noah was owed some $1.1

(continued...)



A00236

Noah wrongfully threatened and then did cut off HPW's inventory supply [*Ex.s "16"-"17" of EXH.5*]. HPW merely attempted to claim its own due credit earned by millions of dollars in direct payments.

(3) Par. no. 17 is wrong about HPW's communication with Sunkist and some other suppliers was regarding HPW's attempt to obtain due credit earned from millions of dollars in direct payments. For years Noah had threatened to halt of inventory at will, irrespective of accounting, fairness, and his forceful breaches of contract, i.e., Ex."16" of EXH.5, re: efforts to obtain such independent credit, including a proper letter to Sunkist. Despite what Noah/Hideo allege, all the Kobayashis wanted the Sunkist letter sent.[19]

**D. CLOSING COMMENTS**

9. A few closing comments to round out the above discussion are following.

a. In late September 1993, arbitration of the herein dispute was attempted utilizing Mr. Tanaka as intermediary. Noah claimed he could not mitigate without Grant's consent, which was not given. Also, Plaintiffs wrongful September 13, 1993 demand letters caused the opportunity for

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(...continued)
million, and Hideo also believed that he alone could not defeat Noah, partially because Noah "had something over" Hideo.Now there seems to be a new or amended secret agreement between Hideo and Noah.

19 The only reason Bea did not sign the Sunkist letter was that she was at school teaching, but wanted Sunkist to be immediately notified due to HPW's real need to keep product flowing into the warehouse, despite Noah's damages to HPW. Ex."O" of EXH.5 [*Ex."7" of EXH.1*] (page 4 of 5) shows Bea's handwritten notes confirming HPW's need and attempts to establish supplier credit via "serious" agreement to "author letter" for same. Ex. "16" of EXH.5 shows John Kobayashi helped LeRosa to author such letter. Ex."17" of EXH.5 shows Noah even asking for money wired to his account prior to a purchase order. Lighter countered with the temporary solution of cashier's checks even though substantial credit was contracted for and otherwise due per overpayments, due to Noah also threatening to sell our exclusive and other products to third parties (probably insider Grover Kam, who ended up with the HPW operation together with Noah). Other matters by Noah merely support Lighter's activities as rational, ethical and necessary via the true story.

certain trust(s) to conduct scheduled utilization of certain property to thereby be crushed.

b. Actions by Noah and counsel for Kobayashis--Randolph Slaton--prevented another property, at 1045 Spencer Street, from being utilized by the AUT trust. Noah also prevented the Roundtop Drive property from being utilized by the trust. Note, Mr. Preston Gima attempted to defeat (a) $1.1 million wrongly billed to HPW and Kobayashi, plus (b) allegations of indictable acts committed by HPW and others: in view of Kobayashi attempting to, in effect, confess to indictable acts by alleging that he is the alter ego of HPW. Upon Hideo being successful, HPW should be out of this case per no dispute with Noah, who caused HPW's operations to covertly be turned over to insider Grover Kam. Lighter, et al. was not invited to participate despite Beaumont seemingly still pledged to the Kobayashis (and according to Hideo, potentially Noah). Lighter was/is significantly liable for tax returns filed, which oppose the Kobayashis/Noah returns. Lighter is owed a huge sum for his work performed under the most serious threat of wrongful prosecution/persecution[20]; and Kobayashis and Noah still try to blame Lighter for their misdeeds[21].

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20 On 10/13/93, Hideo was arrested in Bank of Hawaii, Keeamoku Branch, for theft, with Bank of Hawaii as complainant. HPD Criminal Investigation Division personally told Lighter they needed Hideo to continue to stop changing his mind if he is for or against Noah, and testify against Noah in order to further prosecute, just as he promised for the 9/20/93 HPD report. Instead, Noah and Hideo turned on the auditor/whistleblower Lighter. HPW's wholesale distribution operations of HPW were soon terminated by Noah and accomplice Hideo. The HPW (a) customers, (b) employees, and (c) products and services, were moved to a different company with a relationship similar to that HPW had with Noah: Grover Kam, et al.

21 Maliciously, Hideo physically locked Lighter out of the HPW warehouse. Lighter attempted to arrange for arbitration between Hideo and Lighter, again through Mr. Tanaka. No meeting between Hideo and Lighter occurred. However, no demand letters were made or delivered. No termination of officership or directorship were made or demanded. Lighter believed that this was a temporary tantrum by Hideo. Lighter continued his work, especially since the main HPW office and virtually all the company records had been moved from the warehouse to Lighter's location months

(continued...)

c. On November 10, 1993, LeRosa gave Lighter her director's proxy [*one of three total by right, although now to be on appeal; see the Affidavit of Nancy LeRosa annexed to EXH.1*]. Thereafter, Lighter continued to attempt to rescue and expand HPW operations, unaware that Noah substituted HPW with Noah/Grover Kam, et al.[Ex."10" of EXH.5]. Lighter eventually discovered that Hideo and Bea are individually represented by Slaton in Civ. 93-914.[22]

d. For clarity, on January 3, 1994, May 23, 1994 and June 7, 1994, Lighter filed a single original and two amended HPW Annual Reports with DCCA for calendar year 1993 [*Ex."Q" of EXH.5*]; which reports clearly announce the true slate of officers, directors and CEO of HPW.

e. Lighter understood that he controlled HPW for almost one year, and thereby rightfully declared that he duly terminated Slaton as purported counsel for HPW *ab initio;* and for any and all matters regarding HPW herein , plus withdrew HPW as purported Plaintiff in Civ. 94-914, *ab initio*[23].

f. Slaton appears mainly to represent Hideo to benefit his other, richer clients; and the radical conflicts of interest therefrom spawned

(...continued)
prior to this time. Just as alleged by Lighter, the attempts to blame Lighter for the wrongful acts of Noah and Hideo Kobayashi are easily and overtly seen in Noah's pleadings. Somehow, Lighter is now at fault for everything, including acts performed by (1) Liberty Bank, (2) Hawaii state bank examiners, (3) Bank of Hawaii, (4) a Nevada bank, (5) U.S. Postal Inspectors, (6) Examination Division of the Internal Revenue Service, (7) Hideo and Beatrice individually and together, and seemingly a number of other parties.

22 This was filed November 29, 1994 (the complaint was later amended and then served on Lighter December 19, 1994). Slaton purported to represent HPW, Inc. as a plaintiff in this case, to which Lighter objected. Hideo then proceeded to wrongfully, maliciously and without notice attempted to cancel the needed and contracted for medical coverage of LeRosa.

23 However, Slaton appeared for HPW anyway so to concede to Plaintiffs allegations of indictable acts HPW and Lighter are suing Plaintiffs for committing or causing, and thereby incriminating or confessing on behalf of Hideo pursuant to alleging (wrongly) that Hideo is HPW's alter ego.

vicious behavior, including even forcing failure of foreclosure settlement of 1045 Spencer Street property [*Ex."20" of EXH.5*]; a property which could have been helpful in "saving" HPW from Noah's iron grasp SAVE FOR Grant's refusal to allow arbitration in late September 1993 in obvious lack of good faith therefor. Once Noah threatened to "kill" HPW and "take" the Roundtop Drive property, despite good faith efforts to resolve differences (HPW overpaid Noah hundreds of thousands of dollars), any discussion to utilize the Spencer Street property that was dependant upon using non-litigation HPW financial statement was terminated thereby.

g. This appears to Lighter as part of Noah's plan to take all he could, and coverup Lighter's then ongong but convincingly incriminating "fraud audit" results.

h. Further, Noah would undoubtedly attempt to "take" the Spencer Street property, just as Noah is apparently covertly setting up this case to wrongfully "take" Beaumont. Lighter believes that Plaintiffs have lived up to the level of corruption predicted by Lighter. Plaintiffs's counsel told Lighter that he wanted "everything I've got", but he wants nothing from the parties who actually could owe any purported debt: the Kobayashis and HPW.

10. In addition, **Exhbit "BF"** deserves another inspection.

a. The first two checks, nos. 3675 and 3640, in this section are HPW checks payable to U.E.C.S., the former HPW warehouse landlord. There two checks, totalling $20,482.27, were forged by Noah over to Plaintiff Paradise Gold and an alleged creditor of Noah, Campbell Soup, in his attempt to force a contrived warehouse eviction. The warehouse eviction almost caused the contrived bankruptcy of HPW [*Ex."16" of EXH.1*], which would have gone far in covering up and diverting attention from virtually all wrongdoing of Noah as well as Hideo. Par. 3 of Noah's

11/29/94 Affidavit expressly states that Campbell Soup was Noah's client and that HPW paid for same (actually, this was a ruse to assist fNoah in tortiously exploiting HPW). Here we have Noah forging check no. 3640 in order to accomplish such a payment at the cost of eviction. The third check in this exhibit is rebate check from Campbell Soup. It was common for Noah to keep these large checks without crediting HPW. The fifth check in this exhibit is another HPW check Noah forged to provide Campbell Soup with HPW funds.

b. The eight check in this exhibit, no. 3387, is a check Noah forged to pay the "insider" party who now controls the HPW operations, employees and clients, together with Noah: Grover Kam of Dark Enterprises, aka Kametake [*Ex."Q" of 10/24/94 exhibits producted in open Court hearing by Plaintiffs*].

11. HPW Was Actually Quite Profitable. Despite the false HPW tax returns, **Exhibit "BB"** hereto, filed by Hideo and Noah, **Exhibit "CA" of True Debt Affidavit** hereto shows HPW made a taxable profit of at least $142,426 in only nine (9) months between October 1, 1992 and June 30, 1993, based primarily on cancelled checks and bank statements.

a. Lighter was conractually requested and duly authorized to prepare, sign and file the HPW tax returns [*Ex."3","7","9"&"13" of EXH.1*]. However, Lighter was required by the record to file the October 29, 1994 HPW tax return--for the period October 1, 1993 through June 30, 1993, which return amended the August 14, 1993 Lighter filed HPW tax return for the period October 1, 1992 through June 30, 1993, both at **Exhibit "CA" of True Debt Affidait**--in order to to take into account the massive embezzlement and other violations of the Internal Revenue Code and other laws.

b. The Lighter filed tax returns stand in clear opposition to (a)

par. 8 of the 8/5/94 Hideo Affidavit, (b) par. 5 of the 7/14/94 Hideo Affidavit, (c) par. 2 of the 11/29/94 Noah Affidavit, and (d) par. 4 of the 7/14/94 Noah Affidavit. HPW has actually been quite profitable for some four years. The alleged HPW losses are false. The alleged HPW indebtedness to Plaintiffs is false. The original capital, at least $75,000 in additional loans from friends of the Kobyashis, and the profits are missing. Lighter could not possibly have taken the money. The problem arose the first year of operation, and that is why the fraud audit concontrates on the first year of operation.

12. It is hereby emphasized that this honroable Court has overloked the fact that Ligher,et al. were bailees WITHOUT notice regarding the HPW stock transfer to them.

a. The HPW stock WAS thought to be missing by the time the original three memorandums were signed [*Ex. "1", "2" & "3" of EXH.1*], and Hideo's obviously recanted, self-contradictory recitals were voided when the AUT trust indenture was signed on or about July 25, 1993 [*Ex."11" of EXH.1*]. Lighter duly filed at the BofC the full 10/16/89 PASA documents the date they were discovered, September 17, 1993 [*i.e., Ex."D" of EXH.2 demonstrates that Lighter had not discovered the full 10/16/89 PAPA papers by August 25, 1993*]. Clearly, consideration was paid for the HPW stock via 100% INTEREST in the Beaumont deed being transferred July 25, 1993, WITHOUT a promise of $250,000 EXCEPT from profits of development as a CAP on disbursement for a property that the Kobayashis controlled [*more fully detailed above*].

b. In otherwords, and for one thing, this honorable Court has certainly overlooked the AUT trust indenture and numerous other *prima facie* exhibits in order to come to the wrong conclusions in its October 28, 1994 and December 20, 1994 orders against Lighter's valid claim to

control over HPW.

c. Moreover, this honorable Court has yet to well consider the *prima facie* dispute regarding the two sets of filed HPW tax returns, one set from Hideo and Noah, and one set from Lighter as the duly authorized person to prepare and file such returns [*Ex."3","5","6","7","9","14","18", "20","21","28" and Affidavit of LeRosa of EXH.1;"Ex."C"&"D" of EXH.2; Ex."A" of EXH.3; Ex."10"of EXH.5*]. Page 37 of the transcript for the May 16, 1994 hearing herein is a clear voluntary, material and admissible specific felony confession of Lighter directly to the Court, which makes MANDATORY the strong consideration of these two sets of tax returns regarding the matters herein, 18 U.S.C. 3501(d).

d. Lighter is a whistleblower who has done more than he can reasonably be expected to do in order to report the violations of law Lighter discovered over to the proper authorities. Lighter is being sued for being a whistleblower and a friend to the law.

Further Affiant sayeth naught.

DATED: Honolulu, Hawaii, January 3, 1995.

/S/
ERIC AARON LIGHTER

*[Jurat]* *[Exhibits "BA"-"BF" omitted in reprinting]*

[FILED: ***JAN 3, 1995***, with Lighter Counter Motion]
[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**AFFIDAVIT OF ERIC AARON LIGHTER, RE: HIDEO KOBAYASHI, ET AL. AND NOAH WOO, ET AL. BEING ALTER EGOS TO HPW, INC., EXHIBITS "DA"-"DE"**

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

I, ERIC AARON LIGHTER, upon being first duly sworn under oath, deposes and says that, to the best of my knowledge:

1. ERIC AARON LIGHTER, individually and dba WELLS FARGO PROTECTIVE ALARM SERVICE CO., (together "**Lighter**") makes this affidavit in support of the hereto annexed counter motion ("**Counter Motion**") against Plaintiffs' Motion For Summary Judgement Re Indebtedness Of Defendant HPW, Inc. To Plaintiffs And Expungement of Notices of Implied Or Constructive Trust, filed November 29, 1994 ("**Plaintiffs' Motion**").

2. There are really four main "players" in the drama herein and the case very similar to this case, Hawaii USDC Civil No. 93-00914-ACK ("**Civ. 93-914**"), which similar case is now approached together with this case for settlement purposes: Noah Woo ("**Noah**"), Hideo Kobayashi ("**Hideo**"), his wife Beatrice Kobayashi ("**Bea**"), Lighter and Nancy LeRosa ("**LeRosa**"). Lighter hereby employs the five well exhibited pleadings, annexed hereto by reference as EXH.1-EXH.5, described in full in paragraph ("par") 2 of the Counter Motion. The firm whose accounting is at issue is HPW, Inc. ("**HPW**"), whose tax returns, which use an accrual accounting system with a cost inventory method. The LIFO system, last-in-first-out, is rejected. This means that, regardless of cost valuation, the first moneys pay the first bills. Noah could not have carried the old debts

on the books, created new debts, and then pay off the newer debts first. Even if some later debts were due, the earlier ones were extinguished and all traces of debt arising out the October 16, 1989 Sales and Assets Purchase Agreement ("**10/16/89 PASA**") were removed, and therefor any discussion as to possible restriction on the HPW stock.

3. The record is clear that Noah and Hideo are alter-egos of HPW and each other. Hideo worked for his "boss" Noah less than one year before the 10/16/89 PASA [*Ex."7" of EXH.5*]. There was a blatant merger of Hideo, Noah and HPW, et al. The all had the same or virtually the same post office box (including for IRS and Hawaii tax material), office, telephone, warehouse address, computers, employees (including secretaries), etc. Money from clients was commingled, HPW checks were customarily given to Noah blank [*Ex."6" of EXH.5*], and Noah forged HPW checks at will [*Ex."9" of EXH.5, **Exhibit "BF"** hereto*]

4. **EXHIBIT "DA"** hereto includes the following exhibits, largely taken from the Hawaii Bureau of Conveyances ("**BofC**"):

A00001 * HPW address same as Plaintiffs's address;

* US Marines pay HPW for goods sold by Plaintiffs, check deposited by Hideo to Liberty Bank checking account of HPW, a practice since early 1990;

A00002 * HPW address same as Plaintiffs;

* Army and Air Force pay Plaintiffs at address used by both Plaintiffs and HPW, check deposited by Hideo into the same Liberty Bank account;

A00003-5 * Liberty Bank deposit slip address of HPW same as Plaintiffs;

A00006-13 * Note Liberty Bank deposit slip address;

* Texaco prints HPW address same as Plaintiffs, as do

a number of other customers;

A00014 * Check of HPW shows address and phone number same as Plaintiffs; this is another check Noah wrongfully changed and signed;

A00015 * As late as October 5, 1993 Hideo was secretly using the forbidden Liberty Bank account, which he had printed showing HPW as the alter ego of himself, and using address of Plaintiffs;

A00016-20 * Recent, secret activity of Hideo with various Liberty Bank accounts, with same address as Plaintiffs;

A00021-31 * Various banking documents showing HPW long used the same address and phone number as Plaintiffs; and long deposited military checks for goods sold by Plaintiffs;

A00032-38 * Contract between Army-Air Force Exchanges & Plaintiffs showing that sales were really from Plaintiffs; and even though HPW delivered the goods, it was Plaintiffs's money that HPW deposited to HPW's account (even though in apparent violation of distribution agreements);

A00037 * shows the military also leaves out the hyphen in Plaintiff's name;

A00038 * shows that the military being invoiced to the new address of HPW, but paid to the old address both Plaintiffs and HPW used;

A00039-40 * Transaction between HPW and Campbell Soup showing Plaintiff with same address as HPW for bill paid by HPW for Plaintiff, as usual, and with Noah receiving regular, large rebates from these customers that HPW paid instead of Noah;

A00041-53 * Portion of tax returns and checks for Plaintiffs showing same address as HPW, and Exhibits A00046-47 shows Plaintiff Paradise Gold to be controlled by Plaintiff Hawaii-Pacific Wholesalers, and Exhibit A00045 shows firm to be closely held by Noah's family;

A00054-59* Tax returns and tax documents of HPW showing same address as Plaintiffs; also note A00058 where Hideo demonstrates that he believes that he personally has the same address as Plaintiffs, note that HPW is a Sub-Chapter S corporation filing a form 1120S because Hideo and Noah ran HPW as their alter ego;

* W-2 from Plaintiff Hawaii Pacific without the hyphen, given to Hideo, showing same address as, since the purchase of assets from Plaintiffs by HPW was a purchase of almost worthless assets for purportedly over half a million dollars, it is hardly surprising to find that Hideo was merely an employee of Plaintiffs moving up the ladder of the operation of "boss" Noah;

4. Exhibit "D" of the pleading noted in the Counterclaim as EXH. 2, is first complaint to US Postal Inspectors about mail being stolen by Plaintiffs, also showing discrepancy between checking statement deposits compared to daily cash receipts logs potion attached hereto as **Exhibit "DD"**; also note that Bea, wife thought be her and Hideo to be Hideo's attorney-in-fact, also tried to retrieve the mail from Plaintiffs; the effort was unsuccessfully, with the result of Plaintiffs apparently stealing another $70,000 of vendee checks [*Ex."&" of EXH.1*]. Included also is a few pages from the two logbooks of cash receipts journal filed as an Exhibit to the April 3, 1994 Declaration of Lighter herein. Funds alleged to Noah's were commingled into the HPW account. Notice how military money and liquor sales money is collected by HPW, who made daily deposits of most of the same into HPW's various account: some of the money never made it.

5. **Exhibit "BF"** hereto of the Affidavit of Eric Aaron Lighter, Re: Affidavits of Hideo Kobayashi and Noah Woo, shows various checks over approximately a four month period in 1993 where Noah illegally signed these checks for a dark purpose. Noah created a cloud of confusion and a flurry with these checks in order to have a few key checks divert significant funds from the warehouse landlord in order to cause the

horrendous eviction from the warehouse site. The purpose of this flurry was to be better able to slip by the forged checks without Liberty Bank objecting, which they never did. This occurred even though Noah is not on the HPW signature card, which Liberty Bank well knew because Plaintiffs had their accounts at Liberty Bank. It was precisely because Liberty Bank saw Plaintiffs interacting with HPW almost daily via transfers back and forth, albeit apparently arms length, that Liberty Bank only needed this small cloud in order for Plaintiffs to be able to accomplish the forgery based, malicious warehouse eviction of HPW, see Counterclaim hereto.

6. **EXHIBIT "DB"** hereto includes the following exhibits, largely taken from BofC:

B00001-28+* Business documents showing Plaintiffs and HPW having the same address and phone number, and with generally interchangeable names; especially since HPW paid Plaintiffs bills; the phone number 484-4484 was in HPW's name, see B00017, and Noah directly handling HPW client money as small as $40.00;

B00029-35 * Shows insider Kelvin Shimizu billing Noah as HPW, where this firm has a recent invoice sent by Kelvin as well through Kelvin's firm Hi Volume Sales, this is the party who was arranging with Lighter the financing for HPW's inventory; significantly, Kelvin considered Noah part of HPW even after Noah's consulting agreement ran out; Kelvin has already been named as some kind of a witness for the "bad guys";

B00036-37 * Credit memos from Noah' s real residence: Las Vegas;

B00038-41 * Portion of two of the contracts between Plaintiffs and HPW showing same business address and quite similar names;

E00001-12 * This is evidence that shows only part the analysis that demonstrates that the original purchase of assets from Plaintiffs to HPW appearing to be more than a sham also, here these exhibits show that $50,000 was paid to Plaintiffs by HPW for a premium on a lease only 75

days long;

* This lease was to net only about a single, common warehouse bay at a location very near the razor wire of Oahu prison; where the monthly rental rate in the area was rarely over $.75 per square foot in 1989, and certainly any premiums at all were more than rare;

* Declarant spent almost two years in the profession of industrial real estate, and is shocked at Plaintiffs's deception;

* This fake premium was useful in order to wrongfully amortize the $50,000 in a single year in order to help make sure HPW started out looking unprofitable when in fact the firm was profitable;

* An original promotional flyer showing that HPW had moved by New Years 1990, but apparently it actually took many months to complete the move because an office loft had to be build according to his plans of almost one year before. **See Exhibit "BE" of AFF. ONE**, which shows that Hideo knew well in advance of the 10/16/89 PASA that HPW would "discover" the new warehouse and have to abandon the $50,000 lease premium.

7. **EXHIBIT "DC"** hereto includes the following exhibits, largely taken from BofC:

a. Business cards, including general business card for HPW also used by Hideo. There is also the business card for John Kobayashi, who, like other salespersons at the warehouse, worked simultaneously for both HPW, Inc. and Hawaii-Pacific Wholesalers, Inc., selling both bottled juice, bottled water and liquor. One of the titles Noah Woo used was "sales manager", as seen by supporting records in this section. The records show that the term HPW and Hawaii-Pacific Wholesalers, Inc. was used interchangeably since before the Kobayashis purportedly purchased certain wholesale operations from Noah Woo, et al. In March, 1990, Pali

Momi Medical Center and an injured employee considered John Kobayashi the supervisor of Hawaii Pacific Wholesalers.

b. Note that the employment policy used by HPW was the identical one used by Plaintiffs.

c. Records for employees included Rowan Watanabe and Virginia Santana. Mr. Watanabe was the top HPW salesman who handled some of the largest accounts, including ABC Drugstores in Waikiki. This is a relationship that Noah nurtured, including with ball game tickets and hotel retreats for ABC Drugs, presumably to sell and/or be able to sell liquor at greater advantage in Waikiki. Ms. Santana was the secretary for both Hideo and Noah. She was being paid by both HPW, and apparently "on the side" by Noah. She was fired due to her conflict of favoring Noah Woo over HPW. She was apparently unable to receive unemployment insurance. She wanted and needed the offered job with Dark Enterprises and associate Noah Woo (now located at Building T930, Kapalama, M.R., Honolulu, Hawaii). Other employees who moved over to Dark Enterprises include certain Samoan warehouse labor, whose paychecks I prepared and signed for at least two payroll periods.

7. **EXHIBIT "DD"** hereto includes the following exhibits, largely taken from BofC, namely more documents showing Noah's close control over HPW, including interactions with Bea, Hideo's wife.

8. **EXHIBIT "DE"** hereto includes the following exhibits, largely taken from BofC:

a. There are notes regarding the initial delegation of accounting functions. Noah and Hideo's son John were in expressly in charge of computer accounts receivables. It has already been shown that Noah was the "sales manager", which role included inventory purchases; which is a reason why there are no signed invoices between Plaintiffs and HPW.

b. HPW purchased two computers from its certified public accountant, Isaac Choi, who assisted in the continuity between Plaintiffs and HPW. However, HPW also paid for "Noah's computer" on an ongoing basis. The same employees were utilized in the HPW era as had been used before the 10/16/89 PASA. There was no change in any operations, computer runs formulas, employees, or anything that mattered that could demonstrate authentic arm's length operations between Noah and HPW.

9. In addition to the pleadings herein and in the case similar to this case, Civil No. 93-914, annexed hereto by reference, Lighter has produced a plethora of quality additional evidence in support of the herein, which evidence was already produced to Plaintiffs by Lighter. This addition evidence is described on pages 21-22 of the Counterclaim, is annexed by reference hereto by reference, and includes approximately seven (7) bankers boxes of evidence filed at BofC.

Further Affiant Sayeth Naught.

Dated: Honolulu, Hawaii, January 3, 1995.

/S/
ERIC AARON LIGHTER

[Jurat] [*Exhibits "DA"-"DE" omitted in reprinting*]

[FILED: ***JAN 13, 1995***, with Lighter Reply Memo]
[Heading, USDC Civ. No. 94-00179-HMF, omitted in reprinting]

**AFFIDAVIT OF ERIC AARON LIGHTER, EXHIBITS "A" - "H"**

STATE OF HAWAII )
) SS:
CITY AND COUNTY OF HONOLULU )

I, ERIC AARON LIGHTER, upon being first duly sworn under oath, deposes and says that, to the best of my knowledge:

1. ERIC AARON LIGHTER, individually and dba WELLS FARGO PROTECTIVE ALARM SERVICE CO., (together "**Lighter**") makes this affidavit in opposition to Plaintiffs' Combined Memorandaum In Opposition, ect. filed January 9, 1995 herein. Lighter hereby this reference annexes as if physicaly attached hereto Lighter's Counter Motion ("**Counter Motion**"), filed January 3, 1995 herein, which was filed against Plaintiffs' Motion For Summary Judgement Re Indebtedness Of Defendant HPW, Inc. To Plaintiffs And Expungement of Notices of Implied Or Constructive Trust, filed November 29, 1994 herein.

2. There are really four main "players" in the drama herein and the case very similar to this case, Hawaii USDC Civil No. 93-00914-ACK, which similar case is now approached together with this case for settlement purposes: Noah Woo ("**Noah**"), Hideo Kobayashi ("**Hideo**"), his wife Beatrice Kobayashi ("**Bea**"), Lighter and Nancy LeRosa. Lighter hereby employs the five well exhibited pleadings, annexed hereto by reference as EXH.1-EXH.5, described in full in the second paragraph of the Counter Motion.

3. The firm whose accounting is at issue is HPW, Inc. ("**HPW**"), whose tax returns, which use an accrual accounting system with a cost inventory method.

a. The LIFO system, last-in-first-out, is rejected. This means that, regardless of cost valuation, the first moneys pay the first bills. Noah could not have carried the old debts on the books, created new debts, and then pay off the newer debts first.

b. Even if some later debts were due, the earlier ones were extinguished and all traces of debt arising out the October 16, 1989 Sales and Assets Purchase Agreement ("10/16/89 PASA") were removed, and therefor any discussion as to possible restriction on the HPW stock.

c. Lighter, et al. are bailees without notice regarding exercise of the option to purchase the HPW stock and alleged security interest of Plaintiffs therein, which option price was NOT for $250,000.00 as claimed by Plaintiffs. The HPW stock was transferred to American United Trust on July 25, 1993, whose trustee reissued the HPW stock sincethe original issue was believed missing.

4. Lighter was and still is authorized to prepare, speak about, sign and file the accounting and tax returns of HPW, as so clearly shown in the record and including the Counter Motion.

5. **Exhibit "A"** hereto is a copy of the main portion of Lighter's "fraud audit".

6. **Exhibit "B"** hereto are some adjustments to said "fraud audit", additions to the amount of inventory and freight expenses made by HPW during its first fiscal year. These and other adjustments noted in the Counter Motion increase the fraud audit's righteous position that no debts are due from HPW to Plaintiffs, and in fact Plaintiffs owe HPW, as follows:

| | | | | |
|---|---|---|---|---|
| '11/9/89 | Perma Plastic | 0140 | 1,052.22 | |
| 1/12/90 | Perma Plastic | 0404 | 570.00 | |
| 3/21/90 | Perma Plastic | 0737 | 1,225.50 | |
| 3/28/90 | HI-Volume Sales | 0791 | 800.00 | |

| | | | | |
|---|---|---|---|---|
| 4/4/90 | U-Haul | 0855 | 150.00 | |
| 4/6/90 | U-Haul | 0874 | 41.40 | |
| 4/11/90 | J.A.I., Calif. | 0900 | 2,970.00 | |
| 4/12/90 | U-Haul | 0908 | 125.00 | |
| 4/13/90 | U-Haul | 0916 | 29.38 | |
| 4/17/90 | U-Haul | 0948 | 100.00 | |
| 4/19/90 | U-Haul | 0963 | 32.55 | |
| 5/9/90 | Perma Plastic | 1094 | 934.80 | |
| 5/9/90 | Perma Plastic | 1095 | 826.50 | |
| 5/9/90 | Perma Plastic | 1097 | 934.80 | |
| 6/29/90 | Overseas Freight | 1338 | 441.25 | |
| 6/29/90 | Perma Plastic | 1347 | 1,003.20 | |
| 6/29/90 | Perma Plastic | 1348 | 934.80 | |
| 7/16/90 | Costco | 1440 | 1,223.77 | |
| 7/19/90 | Costco | 1460 | 952.72 | |
| 7/25/90 | Costco | 1475 | 293.75 | |
| Sub-Total | | | | 14,641.64 |
| | | | | |
| 6/6/90 | Paradise Gold | 1238 | 5,356.97 | |
| 7/30/90 | Hawaii-Pacific Whslrs | 1492 | 2,250.00 | |
| Sub-Total | | | | 7,606.97 |
| | Total | | | 22,248.61 |

In addition, included in this exhibits are the following are previously unannounced legal fees payments to Riccio Tanaka paid by HPW apparently on behalf of Plaintiffs and the Kobayashis.

| | | | |
|---|---|---|---|
| 12/22/89 | 0314 | 3,191.70 | |
| 12/27/89 | 0320 | 3,196.78 | |
| 2/9/90 | 0518 | 1,000.00 | |
| 2/16/90 | 0550 | 1,213.50 | |
| 2/16/90 | 0551 | 1,212.50 | |
| 3/30/90 | 0815 | 1,212.50 | |

| | | | |
|---|---|---|---|
| 3/30/90 | 0816 | 1,212.49 | |
| Total | | | 12,239.47 |

The last page of this exhibit is a list of the $182,497.08 paid to Plaintiffs for the $160,708.83 of original inventory. This exhibit is from the workpapers of HPW certified public accountant, filed October 26, 1993 in the Hawaii Bureau of Conveyances ("BofC") as Document no. 93-176706, annexed hereto by reference.

a. A significant amount of these payments were paid from a savings account, see paragraph no. 10(c) below. In typical fashion, Plaintiffs have also failed and refused to give HPW credit for these cash payments, see Counter Motion.

b. HPW's income flowed through the HPW checking accounts before it flowed to the HPW savings accounts, and most transfers into these accounts were small amounts and not amounting to relatively much, as the bank statements and their cancelled checks prove. Many of these statements have been filed at the BofC, i.e. see Document no. 93-181485 filed November 2, 1993.

c. These various savings accounts were designed to separate payments for items such as taxes, rent and 10/16/89 PASA sums to Plaintiffs, but not inventory purchases except the some of the original inventory, see last page of Exhibit "B" hereto.

d. These various savings accounts were abandoned after a relatively short period.

7. **Exhibit "C"** hereto is copies of years of constant HPW insufficient funds notices. Plaintiffs allege that HPW purchased via **UNSIGNED** invoices some $500,000 in inventory not yet paid for. HPW never received funds from sale of this alleged inventory because the

alleged sale of such inventory never occurred in reality. Included is a May 1992 HPW checking account analysis, which shows a typical large negative reserves fund. These insufficient funds notices exist DESPITE HPW being quite profitable for years, as the Counter Motion clearly demonstrates, even using Plaintiffs own financial statements and tax returns.

8. Indeed, in the event that some additional $500,000 in inventory was actually sold to HPW by Plaintiffs, then some $625,000 in cash would eventually show up from sales OR the inventory would show up with a huge surplus. The cash obviously never showed up in HPW. The tax returns AND the many computer runs, which provided detailed listing of inventory item-by-item for HPW, do not show any such surplus inventory.

9. **Exhibit "D"** hereto is copies of just two of Plaintiffs' savings accounts showing significant cash. Plaintiffs had other large resources in addition to just these funds.

a. Shortly after October 16, 1989, the Kobayashis delivered to Plaintiffs $288,000 pursuant to the 10/16/89 PASA.

b. Within the first fiscal year of HPW, another approximately $182,000 for original inventory sold to HPW, see the last page of **Exhibit "B"** hereto. Exhibit "BD" of the Counter Motion shows that Noah had some $600,000 in inventory (at cost) and cash for operations as late as October 1988, with $200,000 in liquor alone (at cost). This huge resource was liquidated, including much of the liquor as all former operations by Plaintiffs were either terminated or reduced.

c. Plaintiffs had large equity properties.

d. Plaintiffs collected huge sums towards the purported HPW inventory accounts payable alleged to be owed to Plaintiffs, constantly

scooping up all or almost all available HPW cash for matters "on account" pursuant to no signed invoices. Plaintiffs logged much of this activity, see Hawaii BofC document nos. 93-143010 and 93-146844, filed August 31, 1993 and September 8, 1993 respectively, annexed hereto by reference. However, the key source of significant funds being taken from HPW by Plaintiffs was pursuant to significant false billings; see the radically falsified computer runs in **Exhibit "A"** hereto, which runs are the basis for the fraudulent HPW tax return accounts payable notations, see Counter Motion.

e. Also in this section is copies of years of constant insufficient funds notices on Plaintiffs. Even though Plaintiffs had sufficient funds, Plaintiffs made it appear that they did not in order to play "poor boy". Nevertheless, Plaintiffs certainly knew HPW was more than in default with Plaintiffs early on, to the point of seriously damaging Plaintiffs with its own alleged creditors--inventory suppliers--if indeed the purported poor financial condition was not a deception. In reality, HPW was very profitable, and it was only made to appear not profitable. Plaintiffs pretended that they were "helping" HPW by making a cloud and flurry of inter-entity transfers that did not prevent a huge amount of insufficient funds notices. The profits of HPW were siphoned off under such a cover.

10. **Exhibit "E"** hereto are excerpts from the deposition of Hideo taken June 1, 1990, attended by Noah, page 43, where Hideo falsely leads counsel into thinking that:

a. Hideo did not work for or with Noah prior to the deposition, page 27, when in fact Hideo received a $13,000 W2 declaration [*Ex."7" of EXH.5*] from Plaintiffs--Hideo went to the mainland to promote Plaintiffs' business in 1988--for employment to them in 1988;

b. That HPW was not in default with Plaintiffs, page 41,

according to the Counter Motion--including paragraph no. 25 therein--since such default would already have occurred; and

c. Curiously, Hideo was more than a little fuzzy at this deposition about what the 10/16/89 PASA purchase price was.

11. Exhibit "F" hereto is a sampling of other interesting checks, as follows:

a. An August 1990 HPW reimbursement check to Bea, who was knowledgeably involved from the beginning, F00001;

b. An August 1990 check to Danny Hashimoto, an honest man but a longtime offshore trust consultant, D00002 ('Where is the HPW money?' is a valid and good question);

c. HPW checks to some of the many HPW savings accounts (see paragraph no. 6 above) no doubt used to create a flurry of confusion just as did Noah's non-arms' length transfers back and forth did, including one called the "Woo Fund", plus some of the larger savings account transactions (these savings accounts lasted for only a relatively short period), plus a check for or related to the Hawaii-Pacific (alter ego) statement "Conversion" nine months after the 10/16/89 PASA, F00003-8, see Counter Motion;

d. A small check to Bank of Honolulu for even another intentionally hard to track HPW savings account (also lasting only a short period), F00009;

e. Selected HPW checks for same that show HPW accepting money for liquor sales for Plaintiffs, F00010-13;

f. Numerous checks from HPW to Hideo in only a four month period in mid 1990, F00014-26; and

g. A sample of evidence of knowledge of purported (contrived) default by HPW, a December 26, 1990 funds transfer from Plaintiffs,

although transfers occured nearly from the beginning (see Exibit "DD" of the Counter Motion), F00027.

12. **Exhibit "G"** hereto is composed of copies of all the check registers for the main HPW Liberty Bank checking account, and does not include the many savings accounts that HPW utilized together with the checking account; **Exhibit "G"** matches the fraud audit. As with all the exhibits herein, this exhibit has the true and accurate copies of the actual check registers, and are in no way hearsay; and therefore neither is the fraud audit.

13. **Exhibit "H"** hereto is composed of copies of the checks in the "fraud audit", save for the May 1990 batch, which batch was given to Hideo back in late September 1993; and if necessary same will be sought via request on Hideo or subpoena on the bank. The check register, **Exhibit "G"** hereto, corroborates and matches with the cancelled checks included for this period. As with all the exhibits herein, these are true and accurate copies of the actual checks and are in no way hearsay; and therefore neither is the fraud audit.

14. Plaintiffs have been and still are victimizing Lighter in order to wrongfully "take" property owned or controlled by Lighter for debts Plaintiffs will not prosecute the alleged debtors for, which Lighter could never have caused. According to the record herein and the Counter Motion, Plaintiffs conducted the business of HPW to merely look like it was not profitable in order to conduct looting and coverup same with a clearly wrongful tax avoidance scheme, further evidenced by the still challenging and valid HPW tax returns filed by Lighter.

15. Plaintiffs want to sanction Lighter for not producing the evidence or not producing it fast enough (even though Lighter did not have control over some of the evidence until now). Lighter has continues to

produce the authentic evidence supporting Lighter's statements. On the other hand, Plaintiffs asked the court to not allow Lighter to use any of the evidence not already in court. Plaintiffs have had produced to them some 57 bankers boxes, and now another four bankers boxes, of evidence. Yet Plaintiffs have apparently or obviously found nothing in this vast record to support their position, and instead desire all of the demanded record be forbidden to be used in this case. This shows to Lighter that Plaintiffs have not nor can not prove that HPW owes Plaintiffs any money, and that Plaintiffs are worried that in all of this evidence there is nothing to support the claims of Plaintiffs.

Further Affiant Sayeth Naught.

Dated: Honolulu, Hawaii, January 13,1995.

/S/
ERIC AARON LIGHTER

[*Jurat*] [*Exhibits "A"-"H" omitted in reprinting*]

[Filed USDC Civil No. 94-00179-HMF (Hawaii) as Exhibit 5 of Lighter Memorandum filed May 4, 1994, CR. No. 32; Lighter also filed same in USA v. Randall Weaver, et al., CR-91-EJL (USDC Idaho]

**AFFIDAVIT OF CARSON SONNY MULLIS**

I, Carson Sonny Mullis, SSN 267-68-6309, do hereby upon the date here unto fixed, declare that I was a Police Officer with the Dade County Sheriffs Department from 1966-1972; I was taught by different instructors of the Agencies of the United States Government, the Federal Bureau of Investigation to be the most prevalent. To name a few of my instructors from the Federal Bureau of Investigation:

1.) F.B.I.-Agent Maury Miller, for Constitutional Law. He was an instructor at the F.B.I. National Academy.

2.) F.B.I. Agent Fred Derner, for Criminal Law. He was also an instructor~at the F.B.I. National Academy.

3.) F.B.I. Agent Welton Merry, for Bank Robbery. He was also an instructor at the F.B.I. National Academy.

4.) F.B.I. Agent Robert Strong, for Use of Force, using different types of weapons, the justifiable shooting, etc. Also an instructor at the F.B.I. National Academy.

I am an expert Homicide Investigator, having helped solve approximately 200 cases of Homicide and shootings in the Dade County area between the years of 1966-1972. I was a Police Range Instructor and courses were given by Dade County and completed by me in the following areas:

1.) Completion of Homicide Investigation, Certified Expert. Certificate issued by Sheriff E.W. Purdy, June 1971.

2.) Study of Mental Illness. Certificate issued April, 1968.

3.) Bachelor of Law, LLB Degree, 122 Credit Hours. Certificate issued September 1969.

Courses were given by Agencies of the United States Government and completed by me in the following areas:

1.) Treasury Department-Bureau of Alcohol, Tobacco, and Firearms. Certificate issued April 1970.

2.) Justice Department. Certificate issued June 1968.

3.) Secret Service. Certificate issued April 1970.

4.) Drug Enforcement Agency. Certificate issued May 1968.

5.} United States Customs. Certificate issued 1970.

I also received in-service training from the United States Marshals Service, the C.I.A., etc. I was one of the officers who was instrumental in the development of the S.W.A.T. Team that is now a part of the Dade County Sheriffs Department. I have found the following in the case of the Ruby Ridge incident that took place between the dates of August 21st, 1992 through September 1st, 1992. The surveillance team that contained six (6) United States Marshals was not sent to arrest Randy Weaver. Therefore, I find the statement of Henry Hudson, Director of the United States Marshals Service, to be correct. They were sent for the purpose of

termination. Thus, I find the following:

a.) That the marshals were all issued M-16 automatics, except one, who was issued a 9mm sub-machine gun with a silencer.

I had the opportunity to shoot this type of weapon under the instruction of the F.B.I. I was told at the time that this type of weapon was not standard issue.This weapon was only used to terminate with extreme prejudice. This weapon would fire enough projectiles that no return fire could be made from the opponent being terminated. The silencer was used to prevent any neighbors or person(s) nearby from hearing the firing and coming to investigate. Those six marshals were not sent to arrest Randy Weaver but to terminate Randy Weaver and all in the cabin. Thus, Henry Hudson stated correctly that the team was not sent to arrest Randy Weaver.

b.) The Randy Weaver home was said to be a fortress. The home has been examined by me and found that it is of plywood construction. The plywood would have been unable to stop the projectiles from the 9mm sub-machine gun (with a silencer) that was carried by Agent Cooper. The termination would have been complete and mission successful.

c.) U.S. Marshal William F. Degan was the one who shot the dog who got in the way of the termination team. This took place in the garden area, not down the hill as told by Agent Cooper (under oath). If Degan was shot by Harris as Agent Cooper testified (-"We were hiding when Harris

and Samuel Weaver went by us. Degan jumped out and identified himself by saying "Stop! U.S. Marshal!" Then Harris turned and fired".), this would have been at point blank range, yet William F. Degan had no powder burns on his clothes or body.

CONCLUSION:

A.) William F. Degan was shot in the garden area after shooting the dog. He was shot from a distance that would indicate he was shot by someone from the house.

B.) Agent Cooper stated that he put his machine gun from full auto to three round bursts, and that he knew he hit him because the subject went down. The subject was Samuel Weaver not Kevin Harris. By the F.B.I.'s own guidelines there are three things needed for a shooting to be within the perimeters of the Deadly Force Policy promulgated by the F.B.I. and other agencies of the United States Government. All personnel of the United States Government ( F.B.I., D.E.A., Marshals Service, B.A.T.F., etc.) are taught that they may use Deadly Force only in a situation when they or someone they have the right to protect, are in immediate and otherwise unavoidable, deadly danger. Those three criteria are Ability, Opportunity, and-Jeopardy.

ABILITY: the opponent possesses the power to kill or cripple, by use of a weapon for instance.

OPPORTUNITY: the opponent is capable of immediately employing

that lethal power. If he is a block away with a knife he has the ability but not the opportunity.

JEOPARDY: the opponent is acting in such a manner that a reasonable person would conclude from his actions that the opponent intended to kill or cripple. At such a time as all three elements are present, the F.B.I., D.E.A., Marshals Service, B.A.T.F., etc. are taught to shoot to neutralize the threat and to cease fire when the threat is over. All three elements must be present for a shooting to be justified.

CONCLUSION: Samuel Weaver was running away and was no threat. Samuel Weaver was shot in the back and died instantly from shots fired by Agent Cooper. The shooting was not justified as there was no jeopardy. One part of the termination teams mission was complete. One person was terminated with extreme prejudice.

SAMUEL WEAVER. Samuel Weaver did not show signs of agonal response, both bullets struck from the back. Agent Cooper committed First Degree Murder under color of law. There can be no excuse for a trained professional to forget his training for the moment, for whatever reason. The shooting had to be intentional. In the death of Vickie Weaver we have the same termination mentality, "The F.B.I. Agent asked his superior if he could take a shot, that he had a clear shot." Permission was given. The agent took the shot hitting Randy Weaver in the arm. At this point Randy Weaver and Kevin Harris turned to run for the house. Vickie

Weaver-was holding the door open. The agent did not ask for permission to take a second shot. The agent took it upon himself to take a second shot, thus hitting Vickie Weaver, killing her instantly.

CONCLUSION: The F.B.I. agent over-stepped his legal ground. There was no ability, opportunity, or jeopardy on the part of Vickie Weaver.There was no agonal response from the victim Vickie Weaver (she was struck in the head and killed instantly).The agent that fired the second shot is guilty of First Degree Murder under color of law to indict Vickie Weaver after the fact so as to protect the agent, compounds the felony act of Murder. There is no excuse for a trained professional to forget his training for whatever reason.

A.) This conclusion, based on different sources, both inside and outside the Government, point to one undeniable fact; that the Weaver family was picked for termination by someone in Government Service. The 9mm sub-machine gun with silencer is only used, and is only good for, termination with extreme prejudice.

B.) As to who shot Degan we may never know. The two daughters were allowed to leave without a test being done to see if they had fired a weapon. Randy Weaver and Kevin Harris would take the heat to protect one so young. When a child sees her dog killed by an assassin who came to terminate her and the family, she would fire automatically, killing the terminator.

In the death of Samuel Weaver, the crimes committed, but not limited to, are:

1. First Degree Murder.

2. Aiding and Abetting by United States Marshals and others of First Degree Murder.

3. Conspiracy to commit great bodily harm.

4. Trespass.

5. Compounding a felony under color of law.

In the death of Vickie Weaver, the crimes committed, but not limited to, are:

1. First Degree Murder.

2. Compounding the felony murder by indicting Vickie Weaver after the fact to protect the agent that committed the murder.

3. Conspiracy to commit great bodily harm.

4. Trespass.

If you cannot indict before the person is terminated then doing it after is wrong. It is similar to going into a house before the warrant is issued as in the case of the Gypsies in Spokane. It is illegal and a trick that has been used by the Fascist and Nazis of our past, who are in the present also.

DATED THIS DATE December 3, 1992:

[*Jurat*]

/S/
SIGNATURE of CARSON SONNY MULLIS